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- TO

CRIMINAL LAW & PROCEDURE

INTENDED CHIEFLY FOR THE USE OF

BAR STUDENTS

AND

ARTICLED CLERKS.

BY

CHARLES THWAITES,

SOLICITOR,

First in First Class Honours, June, 1880; *Sheffield District Prizeman*, 1880; *Reardon (Yearly) Prizeman*, 1880; *Scott Scholar*, 1880; *and Conveyancing Gold Medallist*, 1880;

AUTHOR OF THE ARTICLED CLERK'S GUIDE TO THE INTERMEDIATE EXAMINATION; AND OF GUIDES TO CONSTITUTIONAL LAW; TO COMMON LAW; TO REAL AND PERSONAL PROPERTY; TO EQUITY; AND TO PROCEDURE AND EVIDENCE; EDITOR OF "THE LAW STUDENTS' JOURNAL," ETC., ETC.

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PREFACE TO EIGHTH EDITION.

THE first edition of this work appeared in January, 1886, its object being to assist Articled Clerks and Bar Students in preparing for their examinations.

In this edition, the text has been carefully revised and considerably extended. I have added a Table of Statutes, and in the Table of Cases have inserted the dates and reports. The questions are retained, as they afford a means of self-examination.

I trust that the work may be found sufficient for the needs of the Student, as regards both Criminal Law and Procedure, if he cannot spare the time for perusal of larger works, and that in any event it will be found useful for final revision.

CHARLES THWAITES.

22, CHANCERY LANE, LONDON,
1st September, 1910.

Mr. Thwaites continues to prepare Students, both privately, in class, and through the post, for the Bar, Solicitors' Final, Solicitors' Honours, and Solicitors' Intermediate Examinations. Particulars can be obtained on application to Mr. Thwaites, at 22, Chancery Lane, W.C.

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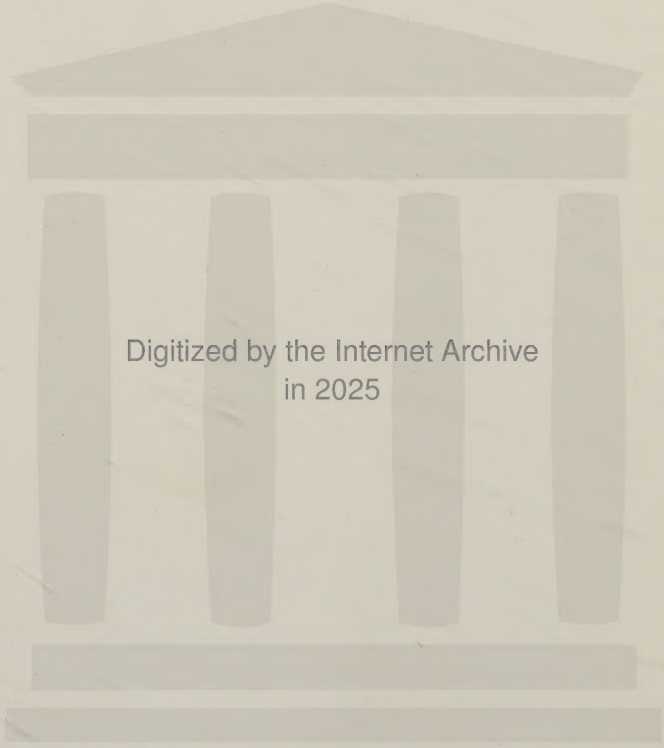

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A GUIDE

TO

CRIMINAL LAW AND PROCEDURE.

INTRODUCTION.

This little work was written mainly with the object of assisting Students for the Bar to pass their Final Examination, but I am glad to find that it has been found serviceable by Articled Clerks preparing for the Solicitors' Final and Honours Examinations, and also by University Law Students, as a means of acquiring and testing their knowledge of Criminal Law.

At the Bar Final, when this book was compiled, an average of three questions was given to Criminal Law at each examination. A separate paper of ten questions is now set on Criminal Law and Criminal Procedure. There is no exemption from this paper on Criminal Law and Procedure. It, together with the papers on Roman Law, and Constitutional Law and Legal History, and Real Property and Conveyancing (or Hindu and Mahommedan Law, or Roman-Dutch Law), constitutes Part I of the examination before call to the Bar. These four papers may be taken, separately or together, at any time after entry as a Bar Student; while Part II, called the Final Examination, cannot usually be taken until the Bar Student has kept six terms. And if any paper in Part I is taken at the same time as Part II, a failure in the Part I paper obliges the candidate to go up again in Part II. As a rule, therefore, it

is desirable for a Bar Student to pass all the papers in Part I before he attempts Part II.

At the Solicitors' Final, six questions out of a total of 60 are set on Criminal and Magisterial Law and Practice, and at the Solicitors' Honours, two out of a total of 36.

The student acts unfairly, both to himself and the examiners, if he so far neglects one of the prescribed subjects as to come to grief over those questions.

The plan of this little work is, firstly, to advise the student on the books to be read; secondly, to give him a general sketch of the elementary points of Criminal Law and Procedure; and thirdly, to provide a series of questions by which he may test himself.

The sketch is elaborated from two articles which I published in the *Law Students' Journal*, for November and December, 1885, under the title of "Elements of Criminal Law."

The questions include a selection from those set at the Bar Final from the year 1872, with original questions added where it appeared desirable.

The sketch and the questions are designed to cover the general points connected with our Criminal Law in such a manner that the Bar Student and Articled Clerk who has worked through them may feel justified in attacking any fair paper on the subject, though it is manifestly impossible, in a little work like this, to deal with the wide subject of Criminal Law in such a way as to forestall any questions that may be set.

I.—WHAT TO READ.

The chief modern works of useful and practical importance on the subject of Criminal Law are :—

1. Stephen's History of Criminal Law.
2. „ Digest of Criminal Law.
3. „ Law of Criminal Procedure.
4. Russell on Crimes and Misdemeanours.
5. Halsbury's Laws of England, Vol. IX, pages 232 to 793.
6. Archbold's Criminal Pleading, Evidence and Practice.
7. Bowen-Rowlands on Criminal Proceedings.
8. Stone's Justices' Manual.
9. Atkinson's Magistrates' Practice.
10. Oke's Magisterial Synopsis.
11. Harris' Principles of Criminal Law.
12. Kenny's Outlines of Criminal Law.
13. Stephen's Commentaries, Vol. IV.
14. Roscoe's Digest of Evidence in Criminal Cases.
15. Warburton's Leading Cases in Criminal Law.
16. Kenny's Cases on Criminal Law.

Stephen's History is very interesting and instructive—if taken, not as part of the student's course of reading, but as separate and pleasant reading before the strict work of reading for an examination commences. Stephen's two Digests are excellent works ; but my experience as a law tutor indicates that they are not easy books for the average student, and they are in two separate volumes. In Vol. IV of Stephen's Commentaries the principles and procedure are very fairly set out. Archbold, Atkinson, Oke, and Roscoe, are very useful in practice, but not for examination purposes. The pages in Halsbury are arranged in a digest, and state the law as on 10th August, 1909.

Stone's Justices' Manual is an admirable work for the police court practitioner, and a careful perusal of the first 96 pages, with or without the pages under Practice (918 to 960 in the 1910 edition), will be of great help to the law student as regards procedure in the police court.

The best works for the student—whether an Articled Clerk or a Bar Student—are Stephen's two Digests or Harris' Criminal Law, and the first 96 pages of Stone's Justices' Manual, with a constant use of Warburton's or Kenny's Cases. Harris or Kenny is the book usually read by the Bar Student. After reading one or both of these books, the student who seeks to ground himself very thoroughly and completely in Criminal Law, cannot do better than turn to the bulky volumes of Russell on Crimes, which contain a wealth of information. This work is, far and away, *the* standard authority, but its bulk will probably deter any one, except a specialist and very hard worker, from tackling it until after he is called, and indeed it is meant—like Archbold and Roscoe—for a court and circuit companion and not for use by a student.

The average Bar Student then will read Harris or Kenny, or Stephen's two works, and 96 pages of Stone, and conclude with a perusal of this little book just before his examination; whilst the student who wishes to do nothing more than is absolutely necessary—a thing which cannot be too strongly deprecated, if time and circumstances permit his doing more—may find that a careful and intelligent perusal of the text and the questions in this book will probably prove sufficient for his purpose.

The Articled Clerk is recommended for the Solicitors' Final and Honours Examinations to read Harris' Criminal Law first (or Stephen's two works); and the first 96 pages of Stone's Justices' Manual, and to conclude with this Guide.

It is believed that a thorough knowledge of this Guide—which has now successfully stood the test of a good many years—will be found sufficient for all ordinary examinations without studying any other work.

As regards cases, the student will find either Kenny or Warburton to be a handy little book of well-selected cases and notes which may be referred to with advantage throughout his reading.

II.—ELEMENTS OF CRIMINAL LAW.

1.—Preliminary Points.

Criminal law and procedure deal with the nature, prosecution, and punishment of crime.

Definition of Crime.

A crime is any violation of municipal law which exposes to punishment. More fully, a crime is an act of commission or omission, contrary to municipal law, tending to the prejudice of the community, for which punishment can be inflicted as the result of judicial proceedings taken in the name of the State.*

Omission to take due care in the performance of a public duty may amount to a crime. Thus where A was employed at a colliery to place a stage over the mouth of the shaft and, owing to his negligent omission to do so, a truck fell down the shaft and killed B, who was employed in walling the inside of the shaft, A was convicted of manslaughter (R. v. Hughes (1857), D. & B., 248).

The leading rule of criminal law is, that nothing is a crime unless plainly forbidden by law (R. v. Price (1884), 53 L. J., M. C., 59) and punishable. But this rule is subject to this exception—that a Common Law court has the discretionary power to declare an act involving great public mischief or moral scandal to be a crime, although it has never before been declared to be so (see 53 L. J., M. C., 55;

* Other definitions have been given, *e.g.*, any disobedience to law forbidden under pain of punishment; *or* any wrong noticed by the Government as being injurious to the public, and punished in proceedings taken in the name of the Government; *or* the violation of a right or duty considered with reference to the evil tendency of such violation as regards the community at large; *or* an illegal act which is a wrong against the public welfare.

Wills, J., in Mansfield v. Taylor, 4 Burr, 2312; Pollock, C.B., in Jefferys v. Boosey (1854), 4 H. L. C., 936; R. v. Brailsford (1905), 2 K. B., 730).

A crime tends directly to the prejudice of the community, while a civil injury tends more directly and immediately to the prejudice of a private right. Thus, delivering less goods than were contracted for is not a crime (R. v. Dunnage, 2 Burr, 1130), but selling by false weights or measures is (R. v. Eagleton (1855), 6 Cox, 559).

The true tests between a crime and a civil injury are—(1) that the latter is compensated by damages, while the former is punished; (2) every person in the community, whether injured or not, can (unless statute law says otherwise) prosecute for a crime (R. v. Wood (1831), 3 B. & Ad., 657), while only the sufferer can sue for a civil injury; and (3) the Crown can remit the punishment for a crime but not the right to sue for a civil injury. When legal proceedings may result in the infliction of a fine, the test whether the subject of those proceedings is a crime or not appears to be if the fine is in the nature of a punishment or a debt (Cattell v. Ireson (1858), 27 L. J., M. C., 170).

The State (in England, the Sovereign as head of the State) is supposed to be injured by any wrong to the community, and is therefore the proper prosecutor. And as criminal prosecutions, no matter who starts them, are always at the suit of the Crown, they are called pleas of the Crown.

Crime and Civil Injury.

The true distinctions have been stated already. A civil injury is either (1) a breach of contract, *i.e.*, a violation of the rights arising under an agreement enforceable at law, which gives rise to an action to recover damages by way of compensation, or (2) a tort, *i.e.*, an injury to private rights not arising out of contract and not requiring

privity between the parties to it, but giving rise to a remedy by action for damages in which the motive for the tort is an important element in fixing the damages. Breach of contract is rarely a crime at Common Law, but has been made a statutory crime in some instances where it is likely to involve great public mischief, *e.g.*, by sections 4 and 5 of the Conspiracy and Protection of Property Act 1875 it is a crime (punishable by £20 fine or 3 months' imprisonment) to break a contract of service with the probable result of depriving the inhabitants of gas or water or of endangering life or exposing valuable property to injury. Many crimes necessarily include a tort; but it is by no means true that every tort amounts to a crime, or that every crime includes a tort. A private nuisance, trespass to land, slander, seduction, and wrongful distress, are merely torts. Public nuisance causing special damage to an individual, assault, libel, rape, and cases under the Fatal Accidents Act 1846 where there is personal injury from negligence causing death, are all crimes as well as torts. Treason, perjury, and blasphemy are crimes, but not torts. It is possible for the same act to be a breach of contract, a tort, and a crime, *e.g.*, if a person hires furniture and then sells it, he is guilty of breach of contract, and wrongful conversion, and larceny as a bailee (R. v. Macdonald (1885), 15 Q. B. D., 323).

When a tort amounts to a crime, it is important to note how far the right to recover compensation for the private injury is subordinated to the duty of vindicating the public wrong. The position varies according to the threefold division of crimes :—

Rule 1.—If the crime is a felony, the sufferer must generally prosecute the offender to conviction before resorting to his civil action for damages. At first, in 1606, it was laid down in Higgins v. Butcher, Yelv., 89, that all right of action for the tort was

merged in the felony; but in 1652 it was held that a civil action would lie after conviction of the felony (Dawkes v. Coveneigh, Styles, 346), and in 1810 a strong Court held that an action would lie after acquittal of the felony (Crosby v. Leng, 12 East, 413). This general rule has been held only to apply between the direct parties to the felony, *e.g.*, in larceny it only applies to an action by the person robbed against the thief or receiver, and not to an action by the person robbed against a person who bought the goods innocently out of market overt (White v. Spettigue (1845), 13 M. & W., 603). In 1873 it was held that the rule does not apply where the unprosecuted felony does not appear on the pleadings but only comes out in evidence at the trial, for the judge must try the issues on the record (Wells v. Abrahams, 41 L. J., Q. B., 306, virtually overruling Wellock v. Constantine, 32 L. J., Ex., 285). The rule cannot be raised by the statement of defence, for *Allegans suam turpitudinem non est audiendus* (Bramwell, L.J., in *Ex parte* Ball (1879), 48 L. J., Bk., 60). This case was one in which the trustee in bankruptcy of an employer was allowed to prove in the bankruptcy of a clerk for moneys embezzled by the clerk, although there had been no prosecution; and Baggallay, L.J., stated the law as follows: (1) A felonious act may give rise to a cause of action; (2) such cause of action arises on the commission of the offence; and (3) the policy of the law will not permit redress by civil action between the immediate parties to the felony, unless the duty of bringing the felon to justice has been performed, except where the felon has died, or escaped the realm, or been prosecuted by someone else. But, apparently, there is no means of

enforcing the rule—unless by the interference of the Attorney General *ex officio*, or of the Court on its own initiative; and the rule is practically a dead letter. At all events, the rule does not apply unless (1) prosecution is possible (*Ex parte* Ball, *supra*); and (2) the action is against the felon, and not against a third person (White v. Spettigue, *ante*; Midland Insurance Company v. Smith (1881), 50 L. J., Q. B., 329; and (3) the action is by the person against whom the felony was committed (Appleby v. Franklin (1886), 55 L. J., Q. B., 109). In a civil action the felony must be proved clearly, and for this purpose a certificate of conviction for the felony is never admissible (Yates v. Wark (1899), W. N., 141), being *Res inter alios alia*.

Rule 2.—If the crime is a misdemeanour, the sufferer may either prosecute for the crime, or sue in damages for the civil injury, or do both concurrently (R. v. Hardy (1850), 14 Q. B., 541).

Rule 3.—Where a tort is punishable as a crime on summary conviction, and proceedings are taken before justices, and they dismiss the case, the justices on request must give a certificate of the dismissal; and such certificate is evidence in all future proceedings, and is a bar to any subsequent information or complaint for the same offence (Summary Jurisdiction Act 1848, sec. 14). And if a charge of common assault or aggravated assault* is preferred before a court of summary jurisdiction, by or on behalf of the party aggrieved (Nicholson v. Booth (1888), 57 L. J., M. C., 44), and is heard on the merits (Reed v. Nutt (1890), 62 L. T., 335), and

* Aggravated assault can be tried summarily on complaint of some one other than the party aggrieved, but in that case no certificate can be given which bars a civil action by the party aggrieved.

the justices deem the offence not proved or justified or so trifling as not to merit any punishment, and dismiss the case, they must give a certificate of dismissal; and this certificate, or (in case of conviction) payment of the fine or suffering the imprisonment, releases the person against whom the charge was brought (Dyer v. Munday (1895), 64 L. J., Q. B., 448) from all other (civil as well as criminal) proceedings for the same cause (Offences Against the Person Act 1861, secs. 42 to 45).

Chief Criminal Statutes.

Criminal Law and Procedure were originally part of the Common Law of the realm, and are so still to a large extent. But, in many instances, crimes have been created or declared, and procedure improved, by statute law. Some of the more important criminal statutes with which the student should be familiar are as follows:—

Treason Act 1351	25 Edw. 3, st. 5, c. 2.
Treason Felony Act 1848 . .	11 & 12 Vict. c. 12.
Quarter Sessions Act 1842 . .	5 & 6 Vict. c. 38.
Burglary Act 1896 . . .	59 & 60 Vict. c. 57.
Indictable Offences Act 1848 . .	11 & 12 Vict. c. 42.
Summary Jurisdiction Acts 1848, 1879, 1884 & 1899 . . .	11 & 12 Vict. c. 43. 42 & 43 Vict. c. 49. 47 & 48 Vict. c. 43. 62 & 63 Vict. c. 22.
Bail Act 1898	61 Vict. c. 7.
Justices Protection Act 1848 .	11 & 12 Vict. c. 44.
Public Authorities Protection Act 1893	56 & 57 Vict. c. 61.
Criminal Procedure Act 1851 . .	14 & 15 Vict. c. 100.
Vexatious Indictments Acts . .	22 & 23 Vict. c. 17. 30 & 31 Vict. c. 35.

Accessories and Abettors Act 1861 .	24 & 25 Vict. c. 94.
Larceny Acts 1861, 1868, 1896 & 1901	24 & 25 Vict. c. 96. 31 & 32 Vict. c. 116. 59 & 60 Vict. c. 52. 1 Edw. 7, c. 10.
Malicious Damage Act 1861 . .	24 & 25 Vict. c. 97.
Forgery Act 1861	24 & 25 Vict. c. 98.
Coinage Offences Act 1861 . .	24 & 25 Vict. c. 99.
Offences Against the Person Act 1861	24 & 25 Vict. c. 100.
Forfeiture Act 1870 . . .	33 & 34 Vict. c. 23.
Prevention of Crimes Acts 1871, 1879, 1885 & 1908 . . .	34 & 35 Vict. c. 112. 42 & 43 Vict. c. 55. 48 & 49 Vict. c. 75. 8 Edw. 7, c. 59.
Bastardy Acts 1872 & 1873 . .	
Conspiracy and Protection of Property Act 1875 . .	38 & 39 Vict. c. 86.
Trade Disputes Act 1906, secs. 1, 2, 5	6 Edw. 7, c. 47.
Territorial Waters Jurisdiction Act 1878	41 & 42 Vict. c. 73.
Criminal Law Amendment Act 1885	48 & 49 Vict. c. 69.
Extradition Acts 1870, 1873 & 1895	
Libel Acts 1792, 1843 & 1888. .	
Summary Jurisdiction (Married Women) Act 1895 . . .	58 & 59 Vict. c. 39.
Juries Detention Act 1897 . .	60 & 61 Vict. c. 18.
Criminal Evidence Act 1898 . .	61 & 62 Vict. c. 36.
Poor Prisoners Defence Act 1903 .	3 Edw. 7, c. 38.
Prevention of Corruption Act 1906	6 Edw. 7, c. 34.
Probation of Offenders Act 1907 .	7 Edw. 7, c. 17.
Criminal Appeal Acts 1907 & 1908.	7 Edw. 7, c. 23. 8 Edw. 7, c. 46.
Costs in Criminal Cases Act 1908 .	8 Edw. 7, c. 15.
Children Act 1908	8 Edw. 7, c. 67.

Divisions of Crimes.

Crimes, considered as a class, are capable of subdivisions; and first, they are either *mala in se, i.e.*, crimes at Common Law, such as murder and rape, or *mala quia prohibita, i.e.*, matters which are criminal simply because an Act of Parliament makes them so, such as smuggling and criminal offences under the bankruptcy laws. A more important division is that into (1) crimes which are the subject of proceedings by indictment before a grand jury, and (2) those trivial offences against the criminal law which are punishable on summary conviction before justices only. In common parlance the word crime is used with reference to the former only, the latter being termed offences.

Indictable Crimes.

Indictable crimes consist of treason, felony, and misdemeanour; attempts to commit any of those crimes; misprision of treason or felony; and the intention to commit high treason (but see *post*, page 19). An infringement of the prohibition or command of a statute as to a matter of public convenience or grievance (*e.g.*, an omission to repair a highway) amounts to a misdemeanour at Common Law.

Treason is any breach of the allegiance, faith or obedience due from the subject to the State. Strictly, all treasons are felonies, and the law as to felonies generally applies to treasons. See *post*, pages 109, 110, for some peculiarities in treason.

Felony is derived by some from the Latin verb *fallere*—to deceive; but, more probably, from two Teutonic words, *fee* and *lon*, meaning the price or value of a feud. The term originally signified the forfeiture of lands entailed by the commission of certain crimes; then those crimes were called felonies; and, finally, a felony was any crime which occasioned a forfeiture of lands and goods, or either, at Common Law, and to which capital or other punishment was added according to the degree of guilt. The only true

criterion of a felony (whether made such by statute or Common Law) was, whether the crime entailed a forfeiture or not; and beyond that, and the facts that a crime likely to happen often in the early days of Common Law is usually a felony, and that the tendency of modern legislation is to make new crimes misdemeanours, no rough and ready rule can be laid down for distinguishing between felonies and misdeameanours. The moral enormity of the crime is no guide, for perjury by which the life of an innocent person is taken away is only a misdemeanour (R. v. Macdaniel (1756), Foster, 131), while a theft of an umbrella is a felony.

Misdemeanour admits only of a negative definition, and is any indictable crime which is not treason or felony.

Differences between Felony and Misdemeanour.

The following is a list of the main points of difference between felonies and misdemeanours :—

(1) Felony always occasioned forfeiture until 1870, whilst misdemeanour never did.

(2) Felony alone admits of accessories.

(3) A person can always be arrested for felony ; but not for misdemeanour, except for actual breach of peace or under a warrant or under some statutory authority.

(4) A felony must be prosecuted before civil proceedings will lie, but it is otherwise with misdemeanours. (But see *ante*, p. 7-9.)

(5) The more serious felonies are usually tried by a superior court, but misdemeanours are often disposed of by inferior courts, *e.g.*, Quarter Sessions. It must not, however, be forgotten that Quarter Sessions (and by consent, Petty Sessions also) have considerable statutory jurisdiction to try both felonies and misdemeanours.

(6) Felonies are tried upon Indictment or Inquisition; misdemeanours upon Information as well.

(7) The right of peremptory challenge exists in felony, and therefore the jurors are sworn singly.

(8) The prisoner is given in charge to the jury in felonies.

(9) In trials for felony the prisoner must be present during all the trial; but in misdemeanour, he need only attend on arraignment.

(10) In felony, the jury were formerly not allowed to separate until they had given a verdict or been discharged; but this did not apply to misdemeanours. Now by the Juries Detention Act 1897 a jury may be allowed to separate before verdict in trials for any felony except treason, treason felony, and murder.

(11) Generally, only one felony must be charged in one indictment.

(12) A convicted felon may be ordered to pay £100 as compensation for loss of or damage to property.

(13) Felony *after* previous conviction for felony or certain misdemeanours exposes to a more severe punishment; but misdemeanour after a previous conviction usually does not.

(14) Misdemeanours which affect a private right more specially than a public right can be compounded (Keir v. Leeman (1846), 9 Q. B., 371; Windhill Local Board v. Vint (1890), 63 L. T., 366); but compounding a felony is always punishable by fine and imprisonment (R. v. Daly (1840), 9 C. & P., 342).

If a person is put on his trial for a misdemeanour, and the facts proved show that the offence committed was a felony, the prisoner does not escape justice; for under the Criminal Procedure Act 1851, sec. 12—(*a*) he may be convicted of the misdemeanour, in which case he cannot be tried again for the felony, or (*b*) the judge may discharge the jury from giving any verdict in the trial for misdemeanour and direct an indictment for the felony.

Misprision, from *mespris*, signifies a contempt or neglect. It consists in the bare concealment of treason (1 & 2 Phil. & Mary, c. 12) or of felony, unaccompanied by anything further which would make the concealer an accessory to the felony or a principal in the treason. The term is also applied to a misdemeanour occasioned by the commission of some unlawful act which has no specific name given to it. The punishment is fine and imprisonment, at the discretion of the judge.

Requisites of a Crime.

To constitute a crime two things are requisite: there must be (1) an act done, and (2) *mens rea*, a guilty mind. This is expressed by the Common Law maxim, *Nemo reus est nisi mens sit rea*, which (virtually) means action does not make a man guilty unless he be so in intention. Thus in R. v. Tolson (1889), 16 Cox, 629, a man left his wife and she married again within seven years, but it was held she could not be convicted of bigamy, because the jury found that at the date of the second marriage she honestly believed the first husband was dead—and consequently she could have had no *mens rea*. So also a publican cannot be convicted for unlawfully serving a policeman on duty if the publican honestly and reasonably believed the man was off duty (Sherras v. De Rutzen (1895), 64 L. J., M. C., 218). Where an act indifferent in itself becomes a crime if done with a particular intent, that intent must be alleged in the indictment and proved (R. v. Woodfall (1770), 5 Burr, 2667), *e.g.*, at Common Law the burning of a dead body is in itself indifferent and no crime, though if done with intent to prevent an inquest, such intent makes it a Common Law misdemeanour and must be laid in the indictment and proved (R. v. Price (1884), 53 L. J., M. C., 51) ; but now by the Cremation Act 1902, the burning of human remains except in accordance with that Act is punishable with £50 fine on summary conviction, and attempting to procure the cremation

of any human remains with intent to conceal, or to impede prosecution for, any offence exposes to 5 years' penal servitude. But when the act is *primâ facie* unlawful—*e.g.*, killing a human being—the law presumes the evil intent, and the onus will lie on the slayer to show the killing was not murder (R. v. Phillips (1804), 6 East, 473). Moreover, this Common Law maxim does not apply to all statutory crimes, because the greater precision of language which is a feature of modern statutes renders it necessary to consider in every case whether, and how far, intention is of the essence of the crime created (R. v. Prince (1875), 44 L. J., M. C., 122). For if once a statute defines a crime, all that is necessary to be proved is that which the statute lays down (Cundy v. Lecocq (1884), 13 Q. B. D., 207). So that if a statute says the *mere doing* of a thing shall be a crime, *e.g.*, for a person having voted once at a parliamentary or municipal election to apply at the same election for another ballot paper in his own name (Corrupt Practices Act 1883, sec. 6), *or* selling liquor to a drunken person without knowing that he was drunk (Cundy v. Lecocq (1884), *supra*), *or* possessing for sale unsound meat not knowing it was unsound (Blaker v. Tillstone (1894), 1 Q. B., 345), or selling any article of food or drug which is not of the nature, substance, or quality demanded by the purchaser (Sale of Food and Drugs Act 1875, sec. 6), *or* trespassing in pursuit of game (Game Act 1831, sec. 30; Watkins v. Major (1875), 44 L. J., M. C., 164), *or* the abduction, for any purpose, of a girl under 16 (Offences Against the Person Act 1861, sec. 55; R. v. Prince (1875), *supra*; R. v. Booth (1872) 12 Cox, 231)—the intention with which that thing is done is absolutely immaterial so far as regards conviction for the crime, though it may be relevant in considering the amount of punishment to be awarded. Of course if the statute specifies an intention as an essential feature of the crime, that intention must be proved by the prosecution.

Where a vicious will (*mens rea*) is essential for a crime, it may be manifested by (1) criminal intention, or (2) criminal negligence.

Criminal intention simply means *malice* in the legal sense, *i.e.*, the design of doing an act forbidden by the criminal law without just cause or excuse. Thus in Roper v. Knott (1898), 67 L. J., Q. B., 574, where a milk distributor put three pints of water into the four gallons of milk he had to deliver, with the intention of keeping for himself the price obtained for the three extra pints, he was convicted of wilful or malicious damage to his master's milk under sec. 52 of the Malicious Damage Act 1861. The thing done must have been done wilfully, or intentionally (R. v. Noon (1852), 6 Cox, 137) or recklessly; and when this is so, the person is not excused if the act results differently to what he anticipated, for a man is responsible for the probable results of his act (R. v. Horsey (1862), 2 F. & F., 287). Thus in R. v. Latimer (1886), 55 L. J., M. C., 135, where two soldiers quarrelled and one took off his belt and hit the other, and the belt rebounded from the blow and cut a barmaid's face, it was held the striker could be convicted of the statutory felony of wounding the barmaid with intent to do grievous bodily harm, under sec. 18 of the Offences Against the Person Act 1861. But in R. v. Pembliton (1874), 43 L. J., M. C., 91, in which A threw a stone at B in a street fight and missed his aim, and broke a valuable plate glass window, it was held A could not be convicted of unlawful and malicious damage to property under sec. 51 of the Malicious Damage Act 1861, because the jury found that A only meant to hit B, and never meant to damage any property, and did not throw recklessly, knowing that if he missed his aim he might break a window.

Pembliton's Case seems to lay down that for all crimes in which a statute makes malice an ingredient, there must be

intention to do the particular kind of harm that was done. Thus to cause a fire unintentionally, even by a felony, will not support a conviction for arson under the Malicious Damage Act 1861—see R. v. Faulkner (1876), 11 Ir. Rep., C. L., 8, where a sailor went wrongfully to the hold of a ship to steal rum, and bored a hole in a cask, and lighted a match to see to put a stopper into the hole he had bored and thereby fired the rum, and the ship was burnt, and it was held that he could not be convicted unless the jury were satisfied that he had acted recklessly with a reasonable ground to suppose the fire would result.

Criminal negligence applies chiefly to homicide, *e.g.*, where a railway signalman, without deliberate intent, but through negligence, omits to turn the points, and an accident results causing death, he would be guilty of manslaughter (Chisholm v. Doulton (1889), 58 L. J., M. C., 133). Whenever any person has a duty to perform, arising by law, or by contract, or by his own conduct (R. v. Barrett (1846), 2 C. & K., 343), and through his negligence in performing or omitting that duty death or personal injury is caused to another—he may be convicted of crime, provided the jury are of opinion his negligence was so gross as to be criminal (R. v. Salmon (1881), 50 L. J., M. C., 25). Criminal negligence means such gross negligence as the jury on the facts in evidence before them consider criminal (R. v. Finney (1874), 12 Cox, 625). Contributory negligence is no defence in a criminal trial (R. v. Kew (1872), 12 Cox, 355).

To show how vitally the intention with which an act is done affects the legality or otherwise of the same act, let us take a familiar example. Suppose that X takes Y's horse out of its stable without Y's consent: (1) If X takes the horse under a distress for rent or under an execution, his act is lawful; (2) if X intends to borrow the horse, use it, and then return it, his act is a trespass, for which damages will lie in a civil action; but (3) if X intends to keep the horse

or absolutely deprive Y of it, the taking is larceny, and punishable as a crime.

The motive for an act is not a sufficient test to determine its criminal character. Motive is that which stimulates to action, and may serve as a clue to the intention; and evidence can be given of the accused's motive for the alleged crime, and of his preparations for it, and of his subsequent conduct (R. v. Palmer (1856)). But although the motive be pure, the act done under it may be criminal, *e.g.*, a man who removes his mother's body from a grave in a burial ground in order to re-inter it in his father's grave in a churchyard some miles distant, without the requisite legal authority, is guilty of a misdemeanour (R. v. Sharpe (1857), D. & B., 160). Purity of motive will not purge an act of its criminal character, but is an important element to be considered by the judge in awarding punishment (R. v. Booth (1874), 12 Cox, 231).

The bare intention to commit high treason is itself a crime; but that intention has to be proved by some letter, or words, or acts, as the law can only find out a man's intention from his acts, and the Treason Act 1351 expressly requires a man to be provably attainted of open deed. In no other case is the mere intention to commit a crime punishable, however clearly it may be proved. Thus if A openly avows the intention of murdering B, he cannot be punished; but B might apply to justices and have A bound over with sureties to keep the peace and be of good behaviour, to prevent the intention being carried out.

Attempts.

Attempt to commit a crime—*i.e.*, the doing of any one thing which must be done before the crime attempted can be carried out (R. v. Heath (1810), R. & R., 184), and which directly approaches to the commission of the crime (R. v. Roberts (1855), Dears, 539), and is such that the accused has

done all in his power to commit the crime (R. v. Ring (1893), 66 L. T., 300)—is itself a crime. Thus, buying a box of matches is of itself no ground for a charge of attempted arson; but if A ask B for work and is refused and threatens to burn B up, and afterwards goes to one of B's stacks and kneels down and strikes a match, but observes he is watched, and thereupon blows out the match and goes away, A may be convicted of attempted arson (R. v. Taylor (1859), 1 F. & F., 511). If A puts his hand into B's empty pocket, A can be convicted of an attempt to commit larceny from the person, because A has done all in his power to commit the crime, and it is a mere accident there was nothing to steal (R. v. Ring, *supra*); or A could be convicted of assault with intent to commit a felony, and be imprisoned up to 2 years. The attempt is usually a Common Law misdemeanour; but sometimes it is declared a felony by statute, *e.g.*, attempt to murder. Where any person is tried for misdemeanour or felony, and the evidence merely discloses an attempt to commit the crime charged, the jury may find him guilty of the attempt to commit the crime with which he is charged (Criminal Procedure Act 1851, sec. 9; R. v. McPherson (1857), D. & B., 197), even if the attempt is itself a felony by statute (R. v. White, murder (1910), 2 K. B., 124).

A person who incites another to commit a crime is guilty of a Common Law misdemeanour* (R. v. Gregory (1867), 36 L. J., M. C., 60); and if a felony is committed in consequence of the incitement, he becomes an accessory before the fact to such felony.

Who may Commit Crimes.

It is a general principle of law that every person is presumed to be sane and responsible for his actions until

* All Common Law misdemeanours are punishable by fine and imprisonment at the discretion of the Court; subject only to the provision of the Bill of Rights that punishments must not be excessive.

the contrary is clearly shown. We need, therefore, only consider to whom the law extends its indulgence, and permits exemption (more or less) from criminal responsibility :—

(1) And first, the Sovereign can do no wrong, and is not, therefore, liable to punishment for his crimes. But the agent who carries out a crime at the instance of the Sovereign would be personally liable (Danby's Case, 1679).

(2) Ambassadors are considered to carry about with them the laws of their own country, and are not, therefore, liable to punishment by our Courts for matters which are crimes by our laws but not by the laws of the ambassador's country, and the only remedy in these cases would be to ask for the recall of the ambassador. But where an ambassador commits a crime against the *jus gentium*, *e.g.*, murder or rape, he is technically just as much liable as a British subject.

(3) Aliens are not excused from punishment for crime; but the fact that a foreigner was ignorant he was doing wrong, as the act was a lawful one in his own country, mitigates the sentence (R. v. Esop (1836), 7 C. & P., 456). The alien is liable, where he is on board a British merchant vessel with or without his consent and although a foreign court has jurisdiction over him (R. v. Anderson (1868), 1 C. C. R., 161).

(4) A corporation aggregate may be indicted and fined in its corporate name for misdemeanours—(*a*) of nonfeasance, *e.g.*, non-repair of a bridge (R. v. Birmingham and Gloucester Railway Company (1840) 9 C. & P., 478); and (*b*) of misfeasance (R. v. Great North of England Railway Company (1846), 16 L. J., M. C., 16), *e.g.*, nuisance. A corporation sole stands in the position of an ordinary individual.

(5) Infancy in some cases affords exemption. Under

the age of seven, an infant cannot be convicted of crime; the law considers him *doli incapax*, and will not permit this presumption to be rebutted. So that where A caught a child under seven stealing his goods and gave him into custody, a plea of felony was held no defence to an action for false imprisonment brought by the child against A (Marsh v. Loader (1863), 11 W. R., 784). If A persuades a child under seven to bring him money belonging to a third person, A is the principal (R. v. Dowey (1868), 11 Cox, 115). Between seven and fourteen, the infant is still presumed to be *doli incapax*; but the presumption may be rebutted by clear evidence that he possessed a discretion to know whether he was doing wrong, for *malitia supplet aetatem* except where he is charged with rape as principal in the first degree. Thus where a boy of ten killed his playfellow, the fact that he hid the body away was held sufficient to rebut his presumed privilege, and in Spigurnel's Case (1 Hale, 26) the boy was hanged, while in York's Case ((1748), Foster, 70), he was reprieved and ultimately pardoned. After fourteen the infant is liable for all his crimes (*e.g.*, larceny as a bailee, R. v. Macdonald (1885), 52 L. T., 583), except mere crimes of omission, as non-repair of a highway. On reaching twenty-one all privilege of infancy ceases.

(6) A married woman is not punished where she commits an indictable crime in the presence of her husband, for she is presumed (until the contrary is proved) to act under his compulsion. But this presumption does not apply to treason, murder, or manslaughter, or the misdemeanours of keeping a brothel or gaming-house. She is always liable where she commits a crime (*a*) out of her husband's

presence, although really under his coercion, or (*b*) in his presence, but of her own free will. In R. v. Dykes ((1886), 15 Cox, 771), a man and his wife were tried for highway robbery, and the jury found the wife acted under the compulsion of her husband, which Stephen, J., held was a verdict of Not guilty against her.

(7) Every person is presumed to be sane and responsible for his acts (R. v. Oxford (1840), 9 C. & P., 525). Insanity is either natural, *i.e.*, idiocy, where from birth the person lacks all understanding; or acquired, where a naturally sane person has lost his reason. Acquired insanity is (*a*) madness, *i.e.*, permanent, or (*b*) lunacy, *i.e.*, temporary; and in each case the insanity may extend to every subject, or only to some subjects. Formerly, insanity was only an exemption from criminal responsibility when the accused was totally deprived of understanding and memory (R. v. Arnold (1724), 16 St. Tr., 704); afterwards this stringent rule was so far relaxed as to make exemption depend on the inability of the prisoner to distinguish abstract right from wrong (R. v. Hadfield (1800), 27 St. Tr., 1281); and *now*, the opinions of the judges delivered to the House of Lords in 1843 in M'Naghten's Case (4 St. Tr. (N. S.), 847) have again relaxed the rule. The *present* rule is: Did the accused, at the time of doing the thing complained of, know that he was doing wrong? If he did not, he cannot be convicted. If the accused is subject to any delusion, he is treated as if the delusion were true, but even then he is to be convicted if he knew (despite his delusion) that he was acting contrary to law. Thus A kills B, the result is—(1) if A did not know he was doing a

wrong thing, he cannot be convicted; (2) if A thought B was going to kill him, A is not to be convicted, for, assuming the delusion were true, A would simply be acting in self-defence; but (3) if A knew he was doing wrong, or (4) if A acted under some delusion which, if true, would not have justified his act, *e.g.*, that B had libelled him—in both these cases A would be guilty of murder. If the accused appears insane when put upon his trial a jury is sworn to try whether he is now sane and fit to plead (R. v. Harris (1897)), and if they find him insane he cannot be tried but is detained in custody (R. v. Sanderson (1895)); Criminal Lunatics Act 1800, sec. 2). If the accused is tried, and it appears he was insane at the commission of the crime, the jury have to return a special verdict of "Guilty, but insane," and the prisoner is then kept in custody as a criminal lunatic during the Sovereign's pleasure (Trial of Lunatics Act 1883); but he can appeal under sec. 3 of Criminal Appeal Act 1907 (R. v. Ireland (1910), 79 L. J., K. B., 338). If the prisoner loses his reason after judgment, but before suffering the punishment, the punishment must be postponed until he recovers his reason, if it consists of more than mere imprisonment.

(8) Drunkenness is not any excuse in law for crime; but is to be taken into account by the jury when considering the intention of a person acting under its influence (per Patteson, J., in R. v. Cruse (1838), 8 C. & P., 541). Thus, where A was indicted for an attempt to commit suicide, and it was shown she was too drunk to know what she was doing, it was held that there could be no criminal intention (R. v. Moore (1852), 3 C. & K., 319). If, however, the drunkenness were not voluntary, the drunkard

could not be convicted for any crime committed whilst drunk (R. v. Pearson (1835), 2 Lew., 145); and if drunkenness has resulted in *delirium tremens*, the person would be treated as insane (R. v. Davis (1881), 14 Cox, 563).

(9) Compulsion may sometimes serve as an excuse for crime, *e.g.*, for joining rebels. But the duress must amount to an imminent danger to life or limb; mere apprehension of hurt to one's property is not sufficient (R. v. McGrowther (1746), Foster, 13). And duress is no excuse for being a party to killing an innocent person—so that where A collected persons together, who armed themselves to resist the lawful authorities, and in the presence of the prisoner (who had joined by compulsion) A stated that he would shoot any constable that came against him, and afterwards carried out his threat in the prisoner's presence, the prisoner was convicted of murder (R. v. Tyler (1838), 8 C. & P., 616).

(10) A master is not criminally liable for the acts of his servant, unless he procured or took part therein. But the owner of works carried on for his profit by his agents can be indicted for a *public nuisance* caused by his workmen in carrying on the works, though done without his knowledge and contrary to his general orders (R. v. Stephens (1866), 35 L. J., Q. B., 251). And certain statutes have been construed to impose a criminal liability on a master for certain offences committed by his servant in the scope of his employment, even though the master has expressly forbidden them, *e.g.*, the Bread Act 1836, Pharmacy Act 1867 (sec. 17), Pawnbrokers Act 1872 (sec. 8), Licensing Act 1872, Sale of Food and Drugs Act 1875, and Merchandise Marks Act 1887 (Coppen v. Moore (1898), 67 L. J., Q. B., 689).

(11) An agent who acts innocently is not personally responsible for his employer's crimes committed by his act. So that where A writes to B that he is at liberty to sign a receipt to a post office order in the name of C, and B signs it, innocently believing he has authority, B is under no criminal responsibility, but A is guilty of forgery (R. v. Clifford (1845), 2 C. & K., 202); and if C poisons D through the innocent agency of E, C is guilty of murder and E is not liable (R. v. Michael (1840), 9 C. & P., 356).

(12) Ignorance of law is never an excuse for crime; but ignorance of fact will be, provided the original design of the prisoner was a lawful one. Thus, if A shoots at his neighbour's dog with the intention of stealing its silver collar and kills B, of whose presence he was ignorant, A is guilty of murder, because of his intention to commit felony (R. v. Serne (1887), 16 Cox, 311; R. v. Whitmarsh (1898), 62 J. P., 711).

(13) Accident is an excuse, provided the act or omission causing death happened in the performance of a lawful act with due caution. But it would be otherwise if the act were unlawful, or if due care were not exercised (R. v. Sullivan (1836), 7 C. & P., 641; R. v. Jones (1870), 11 Cox, 544).

Parties to Crimes.

The persons concerned in a crime may be divided into two broad classes—principals and accessories, each of which is also subdivided.

Principals are found in every crime, but accessories only in felonies. All the parties in any way, before or after the fact, to treason, are dealt with as principals. All concerned in a misdemeanour are treated as principals (Du Cros v. Lambourne (1907), 76 L. J., K. B., 50)—save those concerned

after the fact, who are not punishable at all, unless they commit a separate offence, *e.g.*, obstructing arrest. By sec. 5 of the Summary Jurisdiction Act 1848, a person who aids or abets the commission of any offence punishable on summary conviction, is liable to be proceeded against as if he were the principal offender. So a person summoned for driving a motor car at a speed dangerous to the public can be convicted, although he was not driving, if the justices are satisfied he was aiding and abetting (Du Cros v. Lambourne (1907), *supra*). By sec. 8 of the Accessories Act 1861, whoever aids, abets, counsels, or procures the commission of any misdemeanour (*i.e.*, of any offence less than a felony), whether indictable or not (Du Cros v. Lambourne, *supra*), may be tried and punished as a principal.

A principal is either of the first or the second degree. The former is the actual perpetrator of a crime, the latter includes any one who stands by and assists. Thus, if A breaks into a house and commits a burglary, whilst B remains close outside the house to carry away the stolen goods, and C remains at some distance to give warning of the approach of a policeman, A is principal in the first degree, and B and C are principals in the second degree. The principal need not be actually present, *e.g.*, if A lays poison for B and anybody takes it in A's absence and dies, or if A employs an innocent agent to commit a felony in his absence, in both cases A is principal in the first degree. Nor need he be present all the time, *e.g.*, if several persons combine to forge an instrument, each one who executes any part of the forgery is a principal, even if he does not know by whom the other parts are executed, and is not present when the whole forgery is completed (R. v. Dade (1831), 1 Mood, 307). The mere fact of being present when a felony is committed is not sufficient to constitute a principal in the second degree. If, however, several persons act together in a common unlawful undertaking and a crime is committed by

one and it is not known by which, all are principals in the first degree. Thus, where three men practised rifle shooting near a road without any precautions, and all fired, and one shot killed a boy, all three were convicted (R. v. Salmon (1880), 6 Q. B. D., 79). But there must be actual or constructive presence, to participate in a common unlawful object, and the felony must be the result of the confederacy. Thus, if poachers stun a gamekeeper, and one of them returns and steals the keeper's watch and money, the others are not principals in the robbery (R. v. Hawkins (1828), 3 C. & P., 392). Both classes of principals are liable to the same punishment.

Accessories are also of two classes. *Accessory before the fact* is one who procures, advises or commands a felony to be committed. (If present at the commission he would be a principal.) Thus, where a woman married a widower in the lifetime of her former husband, the widower was convicted of the felony of counselling her to commit bigamy on its being shown that he knew that the former marriage was still subsisting at the time of the second one (R. v. Brawn (1843), 1 Cox, 33). But there must be a felony actually committed, as merely soliciting another to commit an offence, where nothing further is done, amounts to a misdemeanour only (R. v. Gregory (1867), 1 C. C. R., 77). And the felony committed must, in substance, be identical with, or be a necessary or probable consequence of, the felony counselled; so that if A procures B to commit a burglary, and B wantonly sets fire to the house, A is not accessory to the arson, although he is to the burglary (*Ibid.*). But if A advises B to shoot C, and B poisons C or shoots D in mistake for C, here A is liable. Also if A counsels B to beat C, and C dies from the beating. Again, if A counsels B to rob a man, and afterwards by letter withdraws the advice, and B commits the robbery after reading the letter, A is not accessory to such robbery (1 Hale, 618). This kind of accessory is guilty of

felony, and may be indicted, tried, convicted, and punished as if he were a principal felon (Accessories Act 1861, sec. 1), and it seems the better plan to indict him as a principal (R. v. James (1890), 59 L. J., M. C., 96). At Common Law an accessory could only be tried with, or after conviction of, the principal; but now by the Accessories Act 1861 (sec. 2), an accessory may be indicted and convicted, either (*a*) as an accessory before the fact to the principal's felony, *i.e.*, with the principal or after the principal's conviction, or (*b*) for a substantive felony, whether the principal has been previously convicted or not, and even although the principal may not be amenable to justice, *e.g.*, is dead or has escaped.

Accessory after the fact is one who, with knowledge that the person assisted has committed a felony, harbours, relieves, comforts, or assists the felon, or opposes his arrest or rescues him after arrest, with the object of assisting him to escape punishment; but the wife is not punishable for screening her husband (R. v. Good (1842), 1 C. & K., 185). To secure a conviction, it must be proved (1) that a felony has been committed; (2) that the accused did some act to assist the felon to get away from justice (the mere omission to arrest the felon is not sufficient (R. v. Chapple (1840), 9 C. & P., 355); and (3) that the accused did so with notice of the felony committed by the person assisted. This kind of accessory may be indicted and convicted either (*a*) as an accessory after the fact, together with or after conviction of the principal, or (*b*) for a substantive felony, whether the principal has or has not been convicted, or is or is not amenable to justice (Accessories Act 1861, sec. 3), but his punishment is less. By the Accessories Act 1861, sec. 4, accessories after the fact are (unless expressly provided for by some statute) punishable by 2 years' imprisonment, with or without hard labour, and may be bound over to keep the peace, and (in default of finding sureties) imprisoned for a year. An accessory after the fact to murder may be

punished by penal servitude for life (Offences Against the Person Act 1861, sec. 67).

Time for Prosecution.

The broad rule is *Nullum tempus occurrit regi.* No limits are fixed by the Common Law restricting the time within which proceedings may be taken to punish a criminal, except that they must be brought during the life of the person charged. The following are the chief cases in which statute law has fixed a period of limitation:—

(1) For treason committed in England (other than designed assassination of the Sovereign) the grand jury must find the indictment within 3 years after the offence, by the Treason Act 1696, secs. 5, 6.

(2) For felonies under the Riot Act, the prosecution must be commenced within 12 months.

(3) Night poaching, within 12 months after the offence, by the Night Poaching Act 1828.

(4) Offences against the Customs Acts, within 3 years (Customs Act 1876, sec. 257).

(5) Under the Public Authorities Protection Act 1893, 6 months.

(6) Corrupt and illegal practices at elections, 1 year.

(7) Under the Merchandise Marks Act, within 3 years after the offence or 1 year after its first discovery, whichever is the shorter period.

(8) Offences punishable on summary conviction (even where the accused may elect to be tried on indictment), the prosecution must be commenced—which means that the information must be laid (Beardsley v. Giddings (1904), 1 K. B., 847)—within 6 months of the offence by sec. 11 of the Summary Jurisdiction Act 1848; unless it is a continuing offence (London County Council v. Worley (1894), 2 Q. B., 826), or unless the particular statute under which

the prosecution is brought specifies a different period.

Punishments.

Punishments, or sanctions—from a legal point of view—are the means resorted to by the State for compelling that observance of laws which is essential to the well-being of the community. They consist of penalties inflicted with the object of deterring others from breaking the laws, and not with the design of exacting an equivalent for the particular breach committed. As regards the particular offender, the objects of punishment are (1) preventive, (2) deterrent, (3) reformatory, and (4) retributive. It is evident that no fixed rule can be laid down for the punishments to be awarded for a breach of law, because crimes vary widely in their enormity—thus treason is more serious than theft, and theft with violence than theft without; and a crime may be extenuated by the amount of temptation and the heat of passion; and it is not so much the severity of punishment that is likely to prevent crimes as the certainty of punishment. The Legislature, therefore, fixes a maximum penalty for each crime, and usually permits the court to exercise a wise discretion in awarding a smaller penalty. By good conduct it is possible for a male prisoner to earn a remission of one-fourth, and a female of one-third, of the term of penal servitude or imprisonment (Prison Rule 33 of 1899; Prison Act 1898, sec. 8). The Court can always grant a reprieve; and must do so if a woman sentenced to death is pregnant, or if a prisoner becomes insane after judgment. In the case of the woman, a jury of 12 matrons are sworn to try the question of pregnancy.

The punishments recognized by English law are death, penal servitude, preventive detention, imprisonment, hard labour, whipping, fines, police supervision, reformatories, industrial schools, recognizances and sureties, costs and

pecuniary compensation, and, until recent times, forfeiture and solitary confinement.

Death is the highest penalty exacted. In 1800 it could be given for all felonies except petty larceny (*i.e.*, under the value of a shilling) and mayhem. Now it is the penalty for treason, murder, piracy with violence, and arson of ships in the Navy or of royal arsenals or of vessels in the Port of London. No person under 16 can be sentenced to death, but instead must be sentenced to be kept in detention during the pleasure of the Crown (Children Act, 1908, secs. 103, 131). In treason and murder the sentence must be pronounced, but in the other cases it may be recorded under the Judgment of Death Act 1823. The punishment consists of hanging, and in cases of murder is always carried out within the walls of the prison in which the offender is confined at the time of execution (31 & 32 Vict., c. 24, sec. 2), but in the other cases a public execution is still required (*Ibid.*, secs. 2, 16). In treason, the King by sign manual warrant may substitute decapitation for hanging, under the Treason Act 1814.

Penal Servitude was substituted for transportation beyond the seas in 1857, and must be authorized by some statute. A person convicted of any felony for which no special punishment is provided can be sentenced to 7 years' penal servitude (Criminal Law Act 1827, sec. 8). Penal servitude can never be ordered for a person under 16 (Children Act, 1908, secs. 102, 131). Penal servitude consists of imprisonment and compulsory labour as regulated by the Penal Servitude Acts (1853, 1857, 1864, and 1891), and the Convict Prison Rules 1899. The Penal Servitude Act 1891 enacts—(*a*) that where under any Act in force on 5th August, 1891, the court has power to give penal servitude, the *minimum* term in all cases shall be *3 years*, and the *maximum* shall be 5 years or any greater period named in such Act, and (*b*) that where under any past or future Act penal servitude can be given,

imprisonment (with or without hard labour), not exceeding 2 years, can always be substituted unless some Act passed after 1891 says otherwise.

Preventive detention.—If any person is convicted on indictment of any felony, or uttering bad coin, or possessing bad gold or silver coin, or false pretences, or conspiracy to defraud, or being found by night armed with intent to break into any building and commit felony therein, or being found by night in possession of any housebreaking implement, or being found by night disguised with intent to commit felony, or being found by night in any building with intent to commit felony therein; and such crime was committed after 21st December, 1908; and the indictment contains a count charging him with being a habitual criminal, which is subsequently admitted or proved; and he is sentenced to penal servitude; and the court thinks his criminal habits and mode of life make it expedient to protect the public by detaining him for a lengthened period—he may be sentenced to preventive detention for not more than 10 or less than 5 years after his penal servitude determines as an additional punishment. Habitual criminal means a person who (*a*) after 16, has at least three times been convicted of the above-named crimes before his present conviction, and is leading persistently a criminal or dishonest life, or (*b*) has previously been convicted and sentenced to preventive detention. A count for being a habitual criminal cannot be added to an indictment without the consent of the director of public prosecutions, and at least 7 days' notice to the accused and to the proper officer (clerk of assize or clerk of the peace) of the court by which he is to be tried. A person undergoing preventive detention is to be deemed in penal servitude, but is to be subjected to such disciplinary and reformative influences, and be employed on such work, as are best fitted to make him able and willing to earn an honest living on discharge. Every 3 years his case is to be considered, to see if he is fit to be let out on

probationary licence; and after 5 years on such licence he is to be absolutely discharged, if he has complied with the licence and abstained from crime. After a person undergoing penal servitude for not less than 5 years has served 3 years, the balance of his sentence may be commuted into preventive detention. Appeal lies against a sentence of preventive detention to the Court of Criminal Appeal without leave. (Prevention of Crime Act 1908, secs. 10-16; R. v. Weston (1910), 75 L. J., K. B., 1; R. v. Turner, *Ibid.*, 176; R. v. Waller, *Ibid.*, 184.)

Imprisonment as an alternative punishment to penal servitude may never exceed 2 years since the Penal Servitude Act 1891, except when authorized by an Act passed since 5th August, 1891. But any old Act which allows imprisonment for more than 2 years as a substantive penalty, and not as an alternative to penal servitude, is in no way affected by the Act of 1891, *e.g.*, sec. 3 of Libel Act 1843. Imprisonment is regulated by the Prison Acts 1865 to 1898, and the Local Prison Rules 1899. It consists of confinement—(1) with hard labour,* for not less than 6 nor more than 10 hours a day—which is hard bodily labour (*e.g.*, stone-breaking) for males over 16, or hard labour for all other prisoners (1865 Act, sec. 19); or (2) without hard labour—in which case the prisoner is treated as an offender of the first, second, or third division, according to the direction of the court (Prison Act 1898, sec. 6), and the first division now includes the first-class misdemeanant mentioned in the Prison Act 1877 (*Ibid.*). A child under 14 can never be sentenced to imprisonment, and a young person (14-16) can only be sentenced to imprisonment if the court certifies he is too unruly or too depraved for a place of detention (Children Act 1908, sec. 102); but may instead be sent to a place of detention for not more than one month (*Ibid.*, sec. 103.)

* Hard labour can only be awarded where some statute expressly authorizes it.

Solitary confinement was prescribed in special cases under the Criminal Law Consolidation Act 1861, but could not exceed 3 months in a year, nor 1 month at a time. The power to award it has been taken away by the repeal of the enactments which allowed it, by 56 & 57 Vict., c. 54.

Whipping can never be inflicted on females (Whipping Act 1820). Adult males may be whipped when sentenced at quarter sessions as incorrigible rogues under sec. 10 of the Vagrancy Act 1824, and for discharging firearms or explosives at the Sovereign under the Treason Act 1842, sec. 2. Males of any age may be whipped under the Garrotters Act 1863, three times (not more than 50 strokes at a time if over 16, and not more than 25 strokes at a time with a birch rod if not over 16) for robbery with violence, or an attempt to choke, suffocate or strangle with intent to commit any indictable crime. Males under 16 (and under 18 if the offence is taking a reward for recovery of stolen property without bringing the offender to trial, Larceny Act 1861, sec. 101) may be whipped once for numerous offences, under the Larceny Act 1861, Malicious Damage Act 1861, and Offences Against the Person Act 1861, and under sec. 4 of the Criminal Law Amendment Act 1885. If a male child between 7 and 14 is convicted summarily of any indictable crime except homicide, under the Summary Jurisdiction Acts 1879 and 1899, he may be privately whipped by a constable with not more than 6 strokes of a birch rod (sec. 10 of 1879 Act). A male under 16 may be whipped in all cases where an adult can (Children Act 1908, sec. 107 (G)).

Fines cannot be inflicted for felony except under an express statutory power; but misdemeanours can be punished by a fine at Common Law, and any misdemeanour under the Criminal Law Consolidation Act 1861 may be punished by fine. Secs. 10 to 15 of the Summary Jurisdiction Act 1879 (extended by the 1899 Act) and 99 to 112 of the Children Act 1908 should be carefully looked up.

Police supervision may be ordered on a second conviction for any felony, or for the misdemeanours of false pretences, conspiracy to defraud, uttering or possessing bad coin, or being *found by night* either armed with intent to break into a building and commit felony therein, or with housebreaking implements, or disguised with intent to commit felony, or in any building with intent to commit felony therein (Larceny Act 1861, sec. 58). It may be for not more than 7 years: it involves a monthly report by the person sentenced to the chief constable of the district where he resides, and any change of residence must be reported forthwith to the chief constables of the districts of the old and new residences. Failure to comply with these provisions involves a year's hard labour (Prevention of Crimes Act 1871, secs. 8, 20; Penal Servitude Act 1891, sec. 4).

Reformatory.—A reformatory is a school for the industrial training of youthful offenders between 12 and 16, where they are lodged, clothed, and fed as well as taught. When an offender is 12 but under 16 years of age, and is convicted of an offence punishable in the case of an adult by penal servitude or imprisonment, he may (in addition to or instead of any other punishment) be sent to a reformatory for not more than 5 years or less than 3; but the offender cannot be detained after 19 (Children Act 1908, secs. 44, 57, 65).

Industrial School.—An industrial school is one in which children (usually between 7 to 12) are lodged, clothed, and fed, as well as taught. A child who is apparently under 12, and is charged with an offence punishable in the case of an adult with penal servitude or imprisonment, *or* a child of 12 or 13 under special circumstances instead of being sent to a reformatory, *or* a child under 14 whose parent or guardian desires it because he or she is uncontrollable, *or* a refractory workhouse child, *or* a child under 14 whose parent fails to comply with an order for attendance at school—may be sent

to an *industrial school* for proper teaching and training, but must be liberated at 16 (Children Act 1908, secs. 44, 58, 65). Provision is made for the establishment of day industrial schools in any place where circumstances call for a school in which industrial training, education, and one or more meals a day, but not lodging, are provided for the proper training and controlling of the children of any class of population; and any child ordered to be sent to an industrial school may be ordered to attend such a day school (*Ibid.*, secs. 77-83). When anyone is sent to a reformatory or industrial school, a maintenance order can be made at the same time against the parent (*Ibid.*, sec. 75).

Recognizances compel payment of a fixed sum of money in case the condition of the bond is broken, and any person who is convicted of a misdemeanour, or of any felony (except murder) under the Criminal Law Consolidation Act 1861, may be ordered, in addition to other punishment, to enter into a recognizance, with or without sureties, to keep the peace, and in default of finding sureties may be imprisoned for not more than a year.

Costs.

At Common Law, the Crown neither pays nor receives costs. All the provisions as to costs in criminal proceedings are statutory. Costs in criminal proceedings are now governed by the following provisions of the Costs in Criminal Cases Act 1908. A court of assize or quarter sessions before which any indictable offence is prosecuted or tried, and a court of summary jurisdiction before which an indictable offence is dealt with summarily under the Summary Jurisdiction Acts, and any examining justice before whom a charge is made of an indictable offence not dealt with summarily, *may* order the costs of the prosecution or defence, or both, to be paid out of the county or county borough fund. Costs of prosecution include solicitor and

counsel; but costs of defence only include expenses of witnesses, unless a certificate for legal aid was made under the Poor Prisoners Defence Act 1903, in which case the fees of solicitor and counsel, a copy of the depositions, and other expenses properly incurred, are also included. The court by or before which any person is convicted of an indictable offence may, in addition to other punishment, order him to pay all or part of the taxed costs of prosecution and conviction. If a person is acquitted on indictment or information by a private prosecutor—for defamatory libel, or under the Corrupt Practices Acts, or the Merchandise Marks Acts, or on an indictment under the Vexatious Indictments Act where he was not committed or detained or bound over to answer the indictment—the court may order the prosecutor to pay all or part of the taxed costs of the defence. If examining justices dismiss a charge of indictable offence (not dealt with summarily) and think the charge was not made in good faith, they may order the prosecutor to pay the costs of the defence, but if the amount exceeds £25, prosecutor can appeal to quarter sessions against the order. If a person is committed for trial for an indictable offence, or a prosecutor has been bound over to prosecute under the Vexatious Indictments Act, but the accused is not ultimately tried, the court may order payment of costs as if he had been acquitted. On prosecutions for non-repair or obstruction of any highway, public bridge, or navigable river, costs may be allowed as if the parties were plaintiff and defendant in a civil action. An order for either party to pay costs may be enforced like an order for costs in a civil action in the High Court (*i.e.*, by execution), or as a civil debt under the Summary Jurisdiction Acts (*i.e.*, by distress, or on proof of means, by imprisonment). No costs are allowed on any appeal to the Court of Criminal Appeal, or on any case stated to it under the Crown Cases Act 1848; but the expenses of any solicitor or counsel assigned by that

court to the appellant, and of witnesses ordered by it to attend or to be examined, may be allowed out of the county or borough fund (Criminal Appeal Act 1907, secs. 10, 13; Costs in Criminal Cases Act 1908, sec. 9).

The Forfeiture Act 1870 (33 & 34 Vict., c. 23) enacts that no conviction for treason or felony or *felo de se* shall cause any attainder or forfeiture or escheat, other than a penalty forming part of the sentence; but forfeiture on outlawry (which can now only take place when a criminal does not surrender to take his trial) is not affected. A person convicted of treason or felony—who is sentenced to death, or penal servitude, or imprisonment with hard labour, or imprisonment over 12 months—*ipso facto* loses any naval, military, public, ecclesiastical, or corporate office and any public pension; and, until pardon or completion of the sentence, cannot hold any such office or any franchise. The court before which any person is convicted for felony may order him to pay not more than £100 to compensate any person for any loss of property by the felony, and such order creates a judgment debt due from the felon to such person. If judgment of death or penal servitude for treason or felony is awarded, then—until the convict dies or is made bankrupt, or has served his original or any commuted sentence, or gets a pardon—he cannot bring any action or alienate or charge property or make a contract; and his property vests in an administrator appointed by the Home Secretary (or an interim curator appointed by two justices of the peace) who has full power to sell, manage and deal with the property, and to dispose of it for payment of costs and the convict's debts and support of his wife and family. The property reverts to the convict or his representatives, after his sentence has expired or his death. The convict has no power to administer his estate during his sentence, so that he cannot dispose of it by deed; but he may make a will.

Cumulative punishments may be inflicted (1) on a felon

already in prison for another crime, and (2) on conviction for two misdemeanours (R. v. Castro (1880), 49 L. J., Q. B., 747).

Borstal Institutions.

If a person is convicted on indictment of an offence for which he is liable to penal servitude or imprisonment, and he is not less than 16 or more than 21, and his criminal habits or tendencies or association with bad characters make it desirable to detain him to reform him—he may be sentenced to detention in a Borstal Institution for not less than 1 or more than 3 years. The same sentence can be passed on a person detained in a reformatory who escapes or breaks rules. A person between 16 and 21 who is undergoing penal servitude or imprisonment may be transferred by the Secretary of State to a Borstal Institution for the rest of his sentence. A Borstal Institution is a kind of adult reformatory, applicable to young offenders between 16 and 21 who are drifting into a career of crime; it is defined as a place where offenders between 16 and 21 may be detained and given such industrial training and other instruction and be subject to such disciplinary and moral influences as will conduce to their reformation and the repression of crime. The offender may be released from the Institution after 6 months (or if a female, after 3 months) on a licence, if it is reasonably probable that he will abstain from crime and lead a careful and industrious life. In all cases, the offender remains under supervision for 6 months after his sentence expires. (Prevention of Crime Act 1908, secs. 1 to 9.)

Juvenile Offenders.

These are specially provided for by secs. 94 to 113 of the Children Act 1908.

Juvenile offender means either a *child* between 7 and 14, or a *young person* between 14 and 16 (secs. 128, 131). The

court may take evidence as to age, and failing that decide for itself (sec. 123).

A juvenile court is a court of summary jurisdiction when hearing charges against children or young persons. It must —unless the juvenile offender is charged jointly with some person over 16—sit in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different hours from those at which the ordinary sittings are held. And juvenile offenders are to be kept from associating with adults when at, or going to, or returning from, the court. No one is allowed (without leave) in a juvenile court except the members and officers of the court, the parties to the case, their solicitors and counsel, and other persons directly concerned in the case, and *bonâ fide* representatives of a newspaper or news agency (sec. 111).

If an offender under 16 is arrested with or without warrant, and cannot be brought forthwith before a court of summary jurisdiction, the officer in charge of the police station is to admit him to bail, with or without sureties, on a recognizance of his parent or guardian or himself—unless he is charged with homicide or other grave crime, or it is necessary to remove him from association with any reputed criminal or prostitute, or it would defeat the ends of justice (sec. 94). If not released, he is to be kept in a place of detention (other than a prison cell), unless the officer certifies that it is impracticable, or he is too unruly, or his bodily or mental condition or health make it inadvisable (sec. 95). If a juvenile offender is remanded or committed for trial, he is to be sent to a place of detention other than a prison, unless the court certifies he is too unruly or too depraved (sec. 96).

A summons or warrant can be issued to enforce the attendance of any parent or guardian, if an offender under 16 is charged with any offence (sec. 98 and Rule 5 of March, 1909); and such parent or guardian may be ordered to give

security for the offender's good behaviour (sec. 99). If a fine, damages or costs be inflicted on a child or young person, the court may order the parent or guardian to pay (and must do so if the offender is a child), unless satisfied the parent or guardian cannot be found or did not conduce to the offence by neglecting to take due care of the offender (sec. 99). The parent or guardian may be ordered to pay damages or costs or give security for good behaviour, without convicting the child or young person (*Ibid.*). No order can be made against a parent or guardian unless he has been required to attend or had an opportunity of being heard (*Ibid.*). The parent or guardian may appeal against any order upon him—from a court of summary jurisdiction to quarter sessions, and from a court of assize or quarter sessions to the court of criminal appeal (*Ibid.*).

A conviction of a child or young person does not entail any disqualification attached to a conviction of felony (sec. 100).

If a child or young person is personally ordered to pay costs and a fine by a court of summary jurisdiction, the costs are not to exceed the fine, and fees paid by the informant in excess of the costs may be remitted, and the fine may be paid to him towards his costs (sec. 101).

No child can be sentenced to imprisonment or penal servitude for any offence, or imprisoned for nonpayment of a fine, damages, or costs (sec. 102).

No young person can be sentenced to penal servitude (*Ibid.*).

No young person can be sentenced to imprisonment for any offence, or imprisoned for nonpayment of a fine, damages, or costs—unless the court certifies he is too unruly or too depraved for a place of detention (*Ibid.*).

A child or young person cannot be sentenced to death, but instead is sentenced to detention during the pleasure of the Crown (sec. 103). If a child or young person is convicted on indictment of attempted murder, or of manslaughter, or

of wounding with intent to do grievous bodily harm, the court may sentence to detention for a time named in the sentence (sec. 104). If a child or young person is convicted of anything for which an adult could be given penal servitude or imprisonment, or would be liable (if an adult) to imprisonment for nonpayment of a fine, damages, or costs—he may be committed to a place of detention for not more than 1 month (sec. 106).

If a child or young person charged with any offence is tried by any court, and the court is satisfied with his guilt, that court may deal with him under sec. 107—

(A) By dismissing the charge; or
(B) By discharging him on his entering into a recognizance; or
(C) By so discharging him and placing him under the supervision of a probation officer; or
(D) By committing him to the care of a relative or other fit person; or
(E) By sending him to an industrial school; or
(F) By sending him to a reformatory school; or
(G) By ordering him to be whipped; or
(H) By ordering him to pay a fine, damages, or costs; or
(I) By ordering the parent or guardian to pay a fine, damages, or costs; or
(J) By ordering the parent or guardian to give security for his good behaviour; or
(K) By committing him to custody in a place of detention provided under this part of this Act; or
(L) Where the offender is a young person, by sentencing him to imprisonment; or
(M) By dealing with the case in any other manner in which it may be legally dealt with.

Every police authority must provide such places of detention for every petty sessional division in its district as are required for the purposes of the Act (secs. 108 to 110).

But the law does not solely confine itself to punishing crimes committed; it has provided some safeguards for the prevention of crime. Chief amongst these is the right of exacting security to keep the peace and to be of good behaviour. This right may be exercised by any justice of the peace, a judge of the King's Bench, a coroner, and other officials, either on the request of a subject or at their own discretion. *Security to keep the peace* is exacted in two cases —(1) where any person makes oath before a justice that he fears another will kill, or imprison, or do bodily harm to himself, or his wife, or child, or burn his house, and that he is not acting maliciously, and shows grounds for his apprehensions; or (2) where, in the presence of a justice, persons make an affray, or use threats to injure each other, or quarrel and use hot words, or where persons go about with arms or unusual attendance to the terror of the people, or have broken a previous recognizance, or are common barrators. *Security to be of good behaviour* includes security to keep the peace; it may be exacted from all who are not of good fame, *e.g.*, drunkards, vagabonds, suspected persons unable to give a good account of themselves, etc. The security is given by a *recognizance*, which acknowledges a debt due to the Crown; and if the condition of the bond is broken, the recognizance is extracted (*estreated*) from the other records, and sent up to the Exchequer.

A register is kept of all criminals, and they are measured and photographed, and thumb-prints taken, as directed by the Home Secretary (34 & 35 Vict., c. 112; 54 & 55 Vict., c. 69).

Any person is liable, summarily or on indictment, to 1 year's hard labour, if—within 7 years after the expiration of his sentence on a second conviction for any felony, or uttering or possessing bad money, or false pretences, or conspiracy to defraud, or a misdemeanour under sec. 58 of the Larceny Act 1861—he is charged before a court of

summary jurisdiction, on reasonable grounds, with getting his livelihood by dishonest means, *or* refuses to give his name and address, or gives false ones, when charged with any offence before a court of summary jurisdiction, *or* is found in any place about to commit any offence, *or* is unable to satisfactorily account for being found in any house or business place or garden (Prevention of Crimes Act 1871, sec. 7).

The keeper of any lodging house, or place for sale of intoxicants, or place of public entertainment or resort, or brothel, can be fined £10 or 4 months, if he knowingly lodges or harbours thieves or reputed thieves or allows stolen goods to be deposited with him (*Ibid.*, secs. 10, 11). Any dealer in old metal who buys less than stated quantities can be fined £5 (*Ibid.*, sec. 13).

The Probation of Offenders Act 1907 enacts that if a court of summary jurisdiction finds a charge before it, and punishable summarily, is proved, the court may dismiss the information or charge, or may discharge the offender on security to be of good behaviour and come up for sentence within 3 years. Also, that a person convicted on indictment may, instead of being sent to prison, be discharged on the same security. But in each case the court must be satisfied that the character, antecedents, age, health, or mental condition of the offender, or the trivial nature of the offence, or the extenuating circumstances of the crime, make this course expedient. In addition the court may order the payment of damages or compensation (limited to £10 in courts of summary jurisdiction) and costs. For the purpose of revesting stolen property, such a course has the same effect as a conviction. Probation officers are appointed in every petty sessional district to look after such persons and report to the court.

By the Inebriates Act 1898, when a person is convicted on indictment of a crime for which he can get imprisonment or penal servitude, *and* the court is satisfied from the

evidence that the crime was done under the influence of drink, or that drunkenness was a contributory cause, *and* the convict admits, or the jury find, that he is a habitual drunkard (*i.e.*, a person who, not being amenable to any jurisdiction in lunacy, is by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself or to others, or incapable of managing himself or herself and his or her affairs), the court may, in addition to or instead of any other sentence, order him to be detained in any State or certified inebriate reformatory for 3 years. The indictment must charge the accused with being an habitual drunkard, but that allegation is not disclosed to the jury until after they find him guilty of the crime for which he is indicted.

Also by the Children Act 1908, sec. 26, if a person who is convicted of cruelty to a child or young person, or of a number of other offences specified in the first schedule to that Act, is (or is living with) the parent of the child or young person and is a habitual drunkard, the court may, instead of imprisonment, send the person to a licensed retreat, under the Inebriates Act, for 2 years, but only if the person consents.

Crimes naturally classify themselves as being (1) against the person, (2) against property, and (3) against the State, the last division including all crimes of a specially public nature.

2.—Offences against the Person.

Homicide.

Homicide is the killing of a human being, and may be justifiable, excusable, or felonious. It is presumed to be felonious, and murder, until the contrary is shown (R. v. Greenacre (1837), 8 C. & P., 35, 42; Foster, 255).

Justifiable homicide occurs where one person kills another

(1) in pursuance of a legal duty, or (2) in exercise of a legal right. The former class is where the killing is ordered or sanctioned by the law, and thus the slayer really acts on behalf of the State; it includes such cases as where the sheriff duly carries out the execution of a criminal who has been lawfully sentenced to death; or where a peace officer is lawfully arresting anyone who resists and is killed in the struggle; or where a person (not using unnecessary force) kills anyone in an attempt to suppress a riot; or where a person is killed whilst endeavouring to escape arrest for felony or causing a dangerous wound; or where a gaoler kills a felon to prevent his escape. The latter class involves the principle that in defence of liberty or person or property, so much force may be used as is necessary (*i.e.*, not more than enough to attain its object) and reasonable (*i.e.*, which does not inflict on the wrongdoer mischief out of proportion to the wrong he was trying to inflict). And this right of self-defence may be exercised by the party attacked, his relatives, friends and servants and any person present (Foster, 274). Examples occur where one kills another who is attempting to murder or rob him or to break into his house in the *night* (between 9 p.m. and 6 a.m.), or to commit any other forcible and atrocious crime (R. v. Bull (1839), 9 C. & P., 22). Thus, if A is engaged in committing a burglary, he may be prevented even to the extent of killing him by the tenant of the house, and his family and servants, or by anyone who chooses to interfere to prevent the crime. A son who shoots his father under the *bonâ fide* belief on reasonable grounds that the father is cutting the mother's throat, is justified (R. v. Rose (1884), 15 Cox, 540). But the degree of force used in self-defence must be reasonable under the circumstances.

Excusable homicide was formerly regarded by the law as involving some taint of blameworthiness in the slayer, whereas justifiable homicide is altogether free from guilt.

So that formerly, killing another in self-defence upon a sudden affray or by accident entailed a forfeiture of the slayer's goods, usually in practice restricted to the deodand (article which caused the death); the general forfeiture was abolished in 1828, and that of the deodand in 1846. This kind of homicide occurs—(1) By *accident*, where a person, whilst doing a lawful act in a lawful manner without any intention to do hurt, unfortunately kills another, *e.g.*, where a blacksmith is using his hammer and the head flies off and kills a bystander. (2) In *chance medley*, upon a sudden affray, where one having no other means of escape, kills another in defence of himself or his near relative or servant, *e.g.*, where men get heated in discussion, and one suddenly attacks another, *who tries to get away, but cannot*, and then kills his assailant in self-defence; but if the aggressor on being met with resistance either desists or flies, and is then struck and killed, or if the slayer made no attempt to get away, in both cases the slaying is felonious.

Felonious homicide is the killing of one's self or another without just cause or excuse; it is always a crime, and may be suicide, murder, or manslaughter.

Suicide.

Suicide, or self-murder, is where a person who has arrived at years of discretion and is of sound mind, deliberately takes his own life. The crime admits of accessories before the fact. The punishment was formerly the forfeiture of the self-slayer's property to the Crown, and his burial in the highway with a stake through his body and without Christian rites. But now the only penalty incurred is that of burial without Christian rites, and the burial may take place in any way allowed by the Burials Act 1880. The attempt to commit suicide is a Common Law misdemeanour only, and not a felonious attempt to murder, under 24 & 25 Vict., c. 100,

sec. 15; it is triable at quarter sessions. If A and B agree to commit suicide together and accordingly take poison or attempt to destroy themselves and one survives, the survivor is guilty of murder (R. v. Stormouth (1897), 61 J. P., 729).

Murder.

Murder is "when a person of sound memory and discretion unlawfully killeth any human creature who is in being and under the king's peace, with malice aforethought, express or implied" (3 Coke's Inst., 47). A simpler definition is "unlawful homicide with malice aforethought" (R. v. Serne (1887), 16 Cox, 311). Capacity to commit murder is possessed by all except infants under 7 and insane persons (*ante*, pages 21-24). Killing is neither murder nor manslaughter unless the death takes place within a year and a day from the blow or other cause, *i.e.*, the actual day and 365 days after (3 Coke's Inst., 47; R. v. Dyson (1908), 2 K. B., 454). The killing must be unlawful, and not excusable or justifiable; but although, strangely enough, to take away a man's life by perjury is not murder (R. v. Macdaniel (1756), Foster, 131)—the killing may be in any other manner, and may be by any other act or omission the reasonable consequence of which is death. Thus, if a son expose his aged and wealthy father to inclement weather against the latter's will, and the father dies in consequence, this is murder (1 Hawk, c. 31). So, where a gaoler caused the death of a prisoner by shutting him up in unhealthy air (R. v. Huggins (1730), 17 St. Tr., 376); and where a mother hid her infant in a pigstye and the pigs ate it (1 Hale, 433); and where a mother killed a child by exposure to cold (R. v. Waters (1848), 3 Cox, 300). Also where a person is forced to do some act which occasions his own death, *e.g.*, where he is assaulted or threatened, so that in order to escape he jumps into a river and is drowned (R. v. Pitts (1842), C. & M., 284; R. v. Evans, 1 Russell, 651), the

assailant is guilty of murder. Again, where any human being, who is helpless from sickness or infancy or want of intellect, is in the charge of another, and the custodian wilfully omits to supply food when it is his duty and in his power to give it, and death ensues, such person is guilty of murder (R. v. Friend (1802), R. & R., 20). It is no defence to show that the deceased might have recovered if he had taken better care of himself, or adopted a better course of treatment, or undergone an operation which he was advised to submit to, or not undergone an operation advised by a competent medical man but which turns out to have been unnecessary, or not taken chloroform as a preliminary to a necessary operation (R. v. Davis (1883), 15 Cox, 174). And if the accused did in fact hasten the death, it is no excuse that deceased was suffering from a mortal disease.

R. v. Dudley (1885), 54 L. J., M. C., 32, shows that under no circumstances of necessity is a man justified in taking away the life of an *innocent* person in order to save his own, and if he does so he commits murder. Three shipwrecked sailors were in a small boat far from land; to prevent their own death by starvation, two of these men killed the third (who was then dying), and saved their own lives by feeding on his body; and these two were adjudged guilty of murder. This case is distinguishable from the theoretical case of two shipwrecked men getting hold of the same plank which will only support one, and one pushing the other off, as he thereby does him no direct bodily harm, but leaves him to his chance of another plank (see Stephen's Digest, 4th edition, 25).

In an indictment for murder it is sufficient to charge that the accused "did feloniously, wilfully, and of his malice aforethought, kill and murder the deceased," without setting out the means employed or the manner of the death (Offences Against the Person Act (1861), sec. 6).

Malice aforethought means an intention to kill without such cause as will make the killing justifiable or excusable

(*ante*, pages 47, 48), or will alleviate it to manslaughter (*post*, pages 53-55). Malice, in the ordinary sense, means spite, hatred, or ill-will, and is then styled malice in fact; but in the technical legal sense (and in murder) it has a much wider meaning established by a long course of judicial decisions, viz., a deliberate intention to do a wrongful act without just cause or excuse (Bromage v. Prosser (1825), 4 B. & C., 247) and (in murder) without such provocation as will alleviate the killing to manslaughter. To reduce homicide to manslaughter the provocation must be very gross (*e.g.*, when one finds another in bed with his wife, R. v. Maddy (1672), 1 Ventris, 158), and the killing must be on the spur of the moment. A great authority has laid down that no provocation by mere words or gestures only will reduce homicide from murder to manslaughter (Foster, 290); but it was held in 1908 that under special circumstances words will have this effect, *e.g.*, if a husband suddenly hears from his wife that she has committed adultery, he having had no idea of such a thing before, and he is so provoked that he instantly kills her, this is manslaughter (R. v. Jones, 72 J. P., 215). By "aforethought" is meant that this legal malice must precede the doing of the act. And this malice aforethought is either express, *i.e.*, where there is the intention to cause death or bodily injury likely to cause death: or implied, *i.e.*, where the act causing death is done in pursuance of an intention to commit felony, or in resisting lawful arrest, or in doing some act likely to cause death with wanton indifference. All homicide is presumed to be malicious until the contrary is shown. Malice aforethought is to-day nothing more than a comprehensive and convenient term which includes all the various forms of *mens rea* which are held to make homicide produced by any of them the felony of murder. Murder seems to take place only when one causes the death of another—

(1) In attempting to commit any felony (R. v. Serne,

arson (1887); R. v. Whitmarsh, abortion (1898), 62 J. P., 711); and the tendency of modern cases is to restrict this Common Law rule to cases of felony likely to cause death; or

(2) In attempting to kill or to do grievous bodily harm without justification or excuse to some person, whether it be the person killed or not; or

(3) In attempting to resist lawful arrest; or

(4) By wanton indifference to life in doing any act likely to cause death; or

(5) By deliberate intent to fight with weapons likely to cause death.

The punishment for murder is death; but see *ante*, page 42, if the guilty person is under 16.

Attempt to Commit Murder.

This is a felony, punishable by penal servitude for life, under secs. 11 to 15 of the Offences Against the Person Act 1861. These sections are shortly as follows: Where any person *with intent to murder*—

(1) Administers poison or any other destructive thing, or wounds, or causes grievous bodily harm; or

(2) Attempts to administer or cause to be taken any poison or other destructive thing, or shoots, or by drawing a trigger or in any other manner attempts to discharge any kind of loaded arms at any person, or attempts to drown, suffocate or strangle; or

(3) Destroys or damages a building by explosive substance; or

(4) Sets fire to any vessel or goods therein, or casts away or destroys any vessel; or

(5) Attempts to commit murder in any other way not *ejusdem generis* with the foregoing.

Every kind of attempt to murder comes under the foregoing provisions (R. v. White (1910), 2 K. B., 124), and

every act done with intent to murder is an attempt to murder, although the act would not, unless followed by other acts, result in killing (*Ibid*). In R. v. Brown (1883), 10 Q. B. D., 381, A drew a loaded pistol with intent to shoot B, but C immediately snatched it from A, and it was held that there was evidence on which A could be convicted, under head (2), of attempting to shoot B, or to discharge loaded arms at B, but that A could not be convicted under head (5) under which he had been indicted. In R. v. Linneker (1906), 2 K. B., 99, L. drew a loaded revolver saying, You've got to die, but the revolver was wrested from him after a struggle, and in R. v. Duckworth (1892), 2 Q. B., 83, D. drew a loaded revolver and pointed it at his mother but it was taken from him after a struggle—in both cases it was held there was evidence on which prisoner could be convicted under head (2).

Conspiracy to Murder.

Conspiracy to murder, or soliciting or encouraging or persuading any person to murder, is a misdemeanour punishable by penal servitude up to 10 years, by the Offences Against the Person Act 1861, sec. 4. If A publishes an article in a newspaper extolling the assassination of a foreign ruler, and commending it as an example to revolutionists throughout the world, he may be convicted of inciting to murder under this provision (R. v. Most (1881), 7 Q. B. D., 244).

Threat to Murder.

Maliciously sending any letter or writing containing a threat to kill or murder is, if the sender knows its contents, a felony, punishable by 10 years' penal servitude, and with whipping if the accused is a male under 16 (Offences Against the Person Act 1861, sec. 16).

Manslaughter.

This is the unlawful killing of another without malice

aforethought, express or implied; and is said to be voluntary or involuntary.

Voluntary manslaughter is where death is caused by a sudden act of revenge while the accused is still under provocation; and it differs from excusable homicide in *chance medley*, because there has been no attempt to get away before killing in self-preservation the person who gives the provocation. Thus, if A pulls B's nose, or is found in bed with B's wife, or quarrels with B, and in the heat of the moment B kills A, he commits manslaughter (R. v. Kelly (1847), 2 C. & K., 379); but if B's sudden anger has had time to cool before he kills A, so that the killing is a cold-blooded act of revenge, B is guilty of murder (R. v. Thomas (1837), 7 C. & P., 817). No provocation whatever can render homicide justifiable or even excusable; but provocation may reduce the crime to manslaughter. No amount of provocation by mere words, or by gestures expressive of contempt or reproach, or by mere trespass to land or goods, will be sufficient to reduce a death from murder to manslaughter, where a slayer upon such provocation makes use of a deadly weapon or otherwise manifests an intention to kill or do grievous bodily harm (Foster, 290). And this rule applies to all cases of killing upon slight provocation of every kind (R. v. Welsh (1869), 11 Cox, 336). If one kills another with a deadly weapon in sudden passion, to reduce the slaying to manslaughter it must be shown that there was (1) passion in fact, and (2) such provocation as might naturally kindle ungovernable passion in an ordinary man (*Ibid.*). But if one provoked by words, gestures, or actions, gives a box on the ear or a blow with some weapon not likely to kill, and unluckily and against his intention kills, this is manslaughter —*e.g.*, if A beats a trespasser reasonably with an ordinary stick and kills him, A is guilty of manslaughter, but if A kills the trespasser with a gun or deadly weapon, it is murder. Two boys quarrel and fight, and the father of the

beaten boy on seeing him is so provoked that he strikes the other boy a blow which kills him—if the blow is with a deadly weapon, this is murder, otherwise manslaughter (Foster, 290-295). If from words, or gestures of contempt, or any other sudden provocation, the parties come to blows and no undue advantage is sought or obtained on either side, and one kills the other, this is manslaughter only, and it does not matter which struck the first blow. If two quarrel and fight on equal terms, and one suddenly and without any such intention at the beginning of the fight snatches up a deadly weapon and kills the other with it, this is manslaughter (R. v. Snow (1776), 1 Leach, 152); but if the use of the deadly weapon had been intended from the first, or if the slayer had provoked the quarrel in order to kill the other, or if the fight takes place after it may reasonably be supposed that passion has cooled, the killing is murder (R. v. Kirkham (1837), 8 C. & P., 115). No matter how great the provocation may be, if there has been sufficient time for passion to subside, a subsequent killing is murder; and it is for the jury to find how long an interval happened between the provocation and the killing, but for the judge to decide if that interval was sufficient for passion to have cooled (R. v. Fisher (1837), 8 C. & P., 182), though as a matter of practice the judge leaves the whole question to the jury.

Involuntary manslaughter is where death ensues in the commission of some unlawful act not amounting to felony (*e.g.*, playing at some unlawful game, prize fighting, or kicking out a trespasser, R. v. Bruce (1847), 2 Cox, 262); or in the commission of a lawful act in an unlawful manner (*e.g.*, negligent driving). There is authority that death caused by the commission of any tort is manslaughter (R. v. Fenton (1830), 1 Lew., 179), though the modern tendency is to confine the doctrine to torts likely to cause bodily hurt (R. v. Franklin (1883), 15 Cox, 163).

Contributory negligence of the deceased is no defence to

an indictment for manslaughter, though of course it would be to a civil action (R. v. Swindall (1846), 2 Cox, 141; R. v. Jones (1870), 11 Cox, 544; R. v. Kew (1872), 12 Cox, 355). If the driver of a carriage races with another carriage and loses control of his horse and a passenger is killed by the carriage upsetting, both drivers are guilty of manslaughter (R. v. Jones, *supra*). If a man turns out a horse, which he knows to be vicious, on a common across which are public footpaths, and the horse kicks and kills a child, this is manslaughter (R. v. Dant (1865), 34 L. J., M. C., 119). Reckless playing at a lawful game (*e.g.*, football, R. v. Bradshaw (1878), 14 Cox, 83) or breach of the rules of such game (R. v. Moore (1898), 14 T. L. R., 229), if attended with fatal results, is manslaughter. So is death caused by a practical joke (*e.g.*, upsetting a cart in a frolic R. v. Sullivan (1836), 7 C. & P., 641).

If a workman throws down stones or rubbish from a house and kills a passer-by—this would be murder, if done at a time when people were likely to be passing and no warning was given; manslaughter, if done without warning at a time when no one was likely to be about; accidental death, if in a retired place where no persons were in the habit of passing or likely to pass. But if the workman gave warning—the death in a country village would be accidental, but manslaughter in a populous town when the streets were busy. (Archbold, 799.)

The death of a child or scholar from lawful correction by the parent or master amounts to manslaughter, if the correction is immoderate, or the instrument used is improper (R. v. Griffin (1869), 11 Cox, 402). If the correction is moderate and with a proper instrument not likely to cause death or serious bodily injury, the death would be excusable homicide by accident. If the instrument used is likely to cause death (*e.g.*, a hammer or bar of iron) the death will be murder (R. v. Hopley (1860), 2 F. & F., 202).

Omission to supply necessary food, etc., to helpless persons (children, imbeciles, sick or aged), which causes death, is

murder if the omission was intentional (R. v. Condé (1868), 10 Cox, 547), and manslaughter if it is due to gross neglect (R. v. Instan (1893), 1 Q. B., 450); but in these cases of nonfeasance, the prosecution must show that deceased was helpless, and that the accused had the duty and the ability to provide the food, etc. If a parent omits to provide medical aid for his sick child, and death ensues from such neglect, the parent is guilty of manslaughter (R. v. Senior (1899), 1 Q. B., 283; Children Act 1908, sec. 12). To convict a mother of the manslaughter of her newly-born child by neglect, it must be shown that she was guilty of negligence towards the child after it was completely born which caused its death (R. v. Izod (1904), 20 Cox, 690).

Homicide sometimes occurs where an officer of justice is arresting, or attempting to arrest, a person. Here, if the officer effecting the arrest, or any person assisting him, is killed—the death is (1) *murder*, if the person killed is acting with due legal authority and executing it in a legal manner, and the slayer knew that authority; (2) *manslaughter*, if any of these requisites is wanting. If the officer or other person effecting the arrest kills the person he attempts to arrest—the death is (1) *murder*, if the killing happens in pursuit of a person who does not resist but flees, and the arrest is for misdemeanour or in a civil suit; (2) *manslaughter*, if the person flees and the arrest is for misdemeanour or in a civil suit and the killing happens by means not intended to kill or not likely to kill, or if on a charge of felony there is no need for the violence used; and (3) *justifiable*, if the officer is resisted in the execution of his duty in either a civil or a criminal case, or if a felon or giver of a dangerous wound flees and cannot otherwise be arrested (Foster, 270-272).

It is usually said there can be no accessories before the fact to manslaughter, as the essence of the crime is want of premeditation; but this is only correct as to voluntary manslaughter, and has no application to involuntary

manslaughter. Thus where A procured drugs for his wife, intending her to take them to procure abortion, and she took them in his absence, and died from their effects, A was convicted of manslaughter (R. v. Gaylor (1857), 7 Cox, 253). This case was in 1857, and the woman was not pregnant. Since 1861 this would be murder, as A is assisting to commit the felony of procuring abortion (R. v. Whitmarsh (1898), 62 J. P., 711). But now if a schoolboy, A, counsels another, B, to give a third, C, some drug for fun, to make him sick, and C dies; here B is guilty of manslaughter, and A is accessory before the fact.

Manslaughter is punishable by penal servitude for life, or 2 years' imprisonment, or a fine (Offences Against the Person Act 1861, sec. 5). An indictment for manslaughter simply states that the accused "did feloniously kill and slay the deceased" (*Ibid.*, sec. 6).

Libel.

Libel is something made public by writing, printing, pictures, effigy, or permanent record, as distinguished from speech; and may be seditious, blasphemous, indecent, or on a foreigner calculated to stir up enmity with a friendly State R. v. Peltier (1803), 28 St. Tr., 530), or defamatory. The first four are Common Law misdemeanours. Defamatory libel is a misdemeanour punishable—(*a*) with 2 years' imprisonment and fine, if published with knowledge of its falsity, or (*b*) if published without such knowledge, by fine and 1 year's imprisonment (Libel Act 1843, secs. 4, 5); and a person indicted for offence (*a*) may be convicted of the lesser offence (*b*). Libels on a judge or jury which tend to bring the administration of justice into contempt or suspicion may be seditious, but are usually defamatory. Verbal or written comments on any pending case are indictable misdemeanours if they are calculated to interfere with the course of justice (R. v. Tibbits (1902), 1 K. B., 77). So are

slanderous words uttered to a judge or magistrate in the execution of his duty.

Seditious libel is one calculated to disturb the tranquillity of the State and lead ignorant persons to endeavour by violence to alter or overturn the government and laws (R. v. Burns (1886), 16 Cox, 355).

Blasphemous libel is one which in an indecent and malicious spirit assails and asperses the Christian religion or the Bible, in language calculated to outrage the feelings of the general body of the community (R. v. Carlile (1819), 1 St. Tr. (N. S.), 1033). It is not blasphemy to vilify the Jewish or any non-Christian religion (R. v. Gathercole (1838), 2 Lew., 236). But to write that Christ is an impostor and murderer, or that the Old Testament is the work of a random idiot, is blasphemy. However, blasphemy does not include a publication discussing with gravity and decency in argumentative fashion questions as to Christian doctrine, or a mere denial of the truth of Christianity or the Scriptures (Short v. Wilson (1842), 9 Cl. & F., 355; R. v. Ramsay (1883), 48 L. T., 733).

Obscene libel is one where the tendency of the matter published is to deprave and corrupt those whose minds are open to immoral influences and into whose hands it may fall (R. v. Hicklin (1868), 37 L. J., M. C., 89). The obscene matter need not be set out in the indictment (Libel Act 1888, sec. 8). The Obscene Publications Act 1857 permits obscene books and pictures, kept for sale or exhibition, to be seized on a search warrant and destroyed by a magistrate's order.

Defamatory libel is one calculated to injure the reputation of the person to whom it refers by holding him up to hatred, contempt, or ridicule. It is always a crime, because it is calculated to cause a breach of the peace. By consent, a prosecution for newspaper libel may be disposed of on summary conviction and a fine of £50 inflicted, under sec. 5 of the Newspaper Libel Act 1881. A criminal prosecution

cannot be commenced for a libel published in a newspaper unless—(1) the leave of a judge in chambers has been first obtained on notice to the accused (Libel Act 1888, sec. 8), and no appeal is allowed from the judge's decision (R. v. Perryman (1894), 61 L. J., M. C., 91) ; or (2) the prosecution is by criminal information, in which case the leave of a divisional court must be obtained, and this can only be had if the libel attacks the prosecutor with reference to his public office (*e.g.*, coroner, R. v. Labouchere (1884), 53 L. J., Q. B., 362). The prosecution have to prove (1) the publication, and (2) the libellous character, of the writing ; and it is only since Fox's Libel Act 1792 that the second point in criminal cases is decided by the jury. As regards publication, it is sufficient to show the libel to the defamed person only if it has a tendency to cause a breach of the peace (R. v. Adams (1888), 58 L. J., M. C., 1) ; though to give a civil remedy, the publication must be to a third person. If a *primâ facie* case of publication by his agent is made out, the accused may prove that he did not authorize, consent to, or know of it, and was not negligent (Libel Act 1843, sec. 7). It is a good defence to prove that the libel is true *and* that it is for the public benefit to have it published (Libel Act 1843, sec. 6) ; but the truth of an alleged libel is not, and never has been, of itself, a good defence to criminal proceedings, although it is always a defence to a civil action. If, when a libel case is being enquired into in the police court, the magistrate is asked to receive evidence of the truth of the libel, he may do so in two cases. First, if it is a newspaper libel, for sec. 4 of the Newspaper Libel Act 1881 says the magistrate may take evidence showing whether the publication was for the public benefit and was fair and reasonable and was without malice, and any other evidence which could be given in defence at the trial, and may then dismiss the case if he thinks no jury would convict. Second, if the charge is for publishing a libel with the knowledge of its falsity, evidence may be given

to induce the magistrate to commit for trial on the lesser charge of publication only. But in all other cases, the magistrate must decline to admit the evidence; as sec. 6 of the Libel Act 1843 only allows the evidence to be given at the trial after the accused has put in the special plea to the indictment allowed by the section, viz., truth, coupled with publication for the public benefit, and the particular facts which make it for the public benefit (R. v. Carden (1879), 5 Q. B. D., 1). If the communication is made under circumstances which confer qualified privilege—*i.e.*, under circumstances which rebut the presumption of malice (*i.e.*, under a legal, or social, or moral duty)—the prosecution must prove that the accused was actuated by malice in fact, *i.e.*, spite. A wife cannot take criminal proceedings for libel against her husband, nor a husband against his wife (R. v. Lord Mayor of London (1886), 55 L. J., M. C., 118). No criminal proceedings lie for a libel on a dead person, unless it can be shown that the libel was published with the intention of provoking or injuring his living descendants (R. v. Ensor, at Cardiff Assizes, Feb., 1887, 3 T. L. R., 366). If the accused is acquitted, he gets costs from the private prosecutor; and if the accused is convicted, he may be ordered to pay the prosecutor's costs (Costs in Criminal Cases Act 1908, sec. 6). To publish, or threaten to publish, or offer to prevent the publication of, a libel, *with intent to extort*, is punishable by 3 years' imprisonment (Libel Act 1843, sec. 3).

Bigamy.

Whoever, being married, goes through the ceremony of marriage again during the life of the former husband or wife, whether the second marriage takes place in England or elsewhere, is guilty of the felony of bigamy, and liable to 7 years' penal servitude (Offences Against the Person Act 1861, sec. 57). But no crime is committed—(1) if there has been a decree absolute for a divorce or a decree of nullity

of marriage, or (2) if the second marriage is contracted out of England or Ireland by a person who is not a British subject, or (3) if the first husband or wife has been absent and not known to be alive for the preceding seven years, or (4) if the second marriage takes place under a *bonâ fide* belief, based on reasonable grounds, that the former consort is dead (R. v. Tolson (1889), 16 Cox, 629). In cases (3) and (4) the second marriage is void. The indictment would allege "that A B on the day of at the parish of M, in the county of O, did marry one K C, spinster, and her then and there had for his wife, and that the said A B afterwards, and whilst he was so married to the said K as aforesaid, to wit, on the day of at the parish of R, in the county of Y, feloniously did marry and take to wife one E F, and to her the said E F was then and there married, the said K his former wife being then alive." The second husband or wife may be indicted as principal in the second degree, or as accessory before the fact (R. v. Brawn (1843), 1 Cox, 33). The prosecution must prove the celebration of the first marriage, the identity of the parties, the validity of the first marriage, the celebration of the second marriage, and that the first marriage was subsisting at the date of the second. The first (*i.e.*, the true) wife or husband is not admissible as a witness for the prosecution, although the second is. It is not necessary to prove the second marriage would have been binding but for the first, *e.g.*, it is bigamy to go through the ceremony with the wife's niece (R. v. Allen (1872), 41 L. J., M. C., 97). If absence for seven years is proved, the prisoner is entitled to be acquitted unless the prosecution can affirmatively prove that he knew his wife was alive at some time during the seven years (R. v. Cullen (1840), 9 C. & P., 681; R. v. Curgerwen (1866), 35 L. J., M. C., 58), even although he had deserted his first wife but had often been back to the town where she lived (R. v. Faulkes (1903), 19 T. L. R., 250).

Rape.

Rape consists in having carnal knowledge of a female against her will, *i.e.*, by force, or without her conscious permission, or by personating her husband (48 & 49 Vict., c. 69, sec. 4). It is a felony, punishable by penal servitude for life. To have sexual intercourse with a woman in a drunken stupor is just as much rape as seizing a woman and violating her person by brute force (R. v. Camplin (1845), 1 Cox, 220).

To secure a conviction, the prosecution must prove (1) carnal knowledge, and for this penetration of the female's person simply is enough without emission of seed (24 & 25 Vict., c. 100, sec. 63); and (2) the want of consent by the female, or the false personation. Consent given through fear of death, or serious injury, or duress, or obtained by false representation,* is considered by the law as no consent at all. If the female behaved in such an ambiguous manner as to make the accused believe she consented, though in fact she did not, he could not be convicted of rape.

The law does not allow a man to be convicted as principal in the first degree, of a rape on his wife; nor can a boy under 14 commit a rape, even if his physical capacity could be proved. But either might be convicted as principal in the second degree for aiding and abetting the actual criminal, or as accessory before or after the fact.

The female herself is a competent witness; how far she is credible is for the jury to decide under all the circumstances. If she is of good fame, and did not keep quiet about the matter for a considerable time, she is much more likely to be believed than if she has a bad reputation and

* R. v. Flattery (1879), 2 Q. B. D., 410, is still good law, being preserved by sec. 16 of 48 & 49 Vict., c. 69, as rape is a crime at common law; and the decision of Ridley, J. (whose attention was not called to this section), to the contrary in R. v. O'Shay (1898), 19 Cox, 76, is wrong. See, however, sec. 3 of the Criminal Law Amendment Act 1885, *post*, page 66, as to the new misdemeanour thereby created.

is uncorroborated, or if she could have procured assistance and yet made no outcry. Both the fact and the full details of any complaint she made are admitted in evidence, as affording corroboration that she did not consent (R. v. Lillyman (1896), 74 L. T., 730); R. v. Osborne (1905), 1 K. B., 551). A prisoner has been convicted upon the unsupported evidence of an infant, the jury being satisfied of his guilt. The evidence of a surgeon who examined the female shortly after the alleged offence would be of great weight. The accused may give evidence to prove that the female has had connection *with him* previously (R. v. Riley (1887), 56 L. J., M. C., 52), but not that other specified persons have had connection with her. He may ask her if she had had intercourse with others, but her answer is conclusive (R. v. Holmes (1872), 41 L. J., M. C., 12). He may, however, give evidence that she has a general bad character for want of chastity and decency (R. v. Riley, *supra*).

Unlawful carnal knowledge of a girl under 13—even if she consents—is a felony punishable by penal servitude for life. The attempt is a misdemeanour, and the penalty 2 years' imprisonment. In either case, an offender under 16 may be whipped and sent to a reformatory. In either case, if the girl or any witness of tender years does not understand the nature of an oath, such girl or witness may give evidence without taking an oath, provided the witness is sufficiently intelligent to justify the reception of the evidence, and understands the duty of speaking the truth; but such witness is liable for perjury as if duly sworn, and no conviction can take place unless there is corroboration by other material evidence (Criminal Law Amendment Act 1885, sec. 4; Children Act 1908, sec. 30).

In trials for the above felony or for rape, the jury may acquit of the felony or rape, and find the accused guilty of a misdemeanour under secs. 3, 4, or 5 of the Criminal Law Amendment Act 1885 (*infra*), or of an indecent assault.

Having, or attempting to have, unlawful carnal knowledge—(*a*) of a girl over 13 but under 16, or (*b*) of a female idiot or imbecile under circumstances not amounting to rape, but proving the prisoner's knowledge of the idiocy or imbecility—is a misdemeanour punishable by 2 years' imprisonment. But in case (*a*) the prosecution must be within 6 months after the offence (Cruelty to Children Act 1904, sec. 27), and it is a sufficient defence to prove that the accused had reasonable cause to believe the girl was 16 (Criminal Law Amendment Act 1885, sec. 5). These provisions cover cases where it is doubtful if the girl had sufficient intellect to consent.

Procuration.

It is a misdemeanour, with imprisonment up to 2 years, for any person to procure, or attempt to procure, any female—

(1) Under 21, and not being a common prostitute or of known immoral character, to have unlawful carnal connection with another person anywhere; or
(2) To become a common prostitute; or
(3) To leave the United Kingdom to become an inmate of a brothel; or
(4) To leave her usual place of abode (not being a brothel) in the United Kingdom, in order to reside in a brothel for prostitution.

But no conviction can take place upon the evidence of one witness, unless corroborated in some material particular (Criminal Law Amendment Act 1885, sec. 2).

It is a misdemeanour, punishable by 2 years' imprisonment—

(1) By threats or intimidation to procure, or attempt to procure, any female to have any unlawful carnal connection anywhere; or

(2) By false pretences, or false representations,* to procure any female (not being a common prostitute, or of known immoral character) to have any unlawful carnal connection anywhere ; or

(3) To apply, administer, or cause to be taken by any female, any drug, matter, or thing, with intent to stupify, so that any person may have unlawful carnal connection with her (Criminal Law Amendment Act 1885, sec. 3) ; or

(4) If any person having the custody, charge, or care of a girl under 16, causes or encourages her seduction† or prostitution ; and if the girl has been seduced or become a prostitute, it is sufficient if such person knowingly allowed her to consort with, or enter or remain in the employment of, any prostitute or person of known immoral character (Children Act 1908, sec. 17).

If the owner or occupier of any premises, or anyone concerned in the management thereof, induces or knowingly suffers any girl to resort to or be on such premises for unlawful and carnal knowledge (either generally or with a particular man) he is guilty—

(1) If the girl is under 13, of felony punishable by penal servitude for life ; and

(2) If the girl is 13 but under 16, of misdemeanour punishable by 2 years' imprisonment.

But in either case it is a sufficient defence to prove reasonable cause to believe the girl was 16 (Criminal Law Amendment Act 1885, sec. 6). The girl's mother may be convicted under this section (R. v. Webster (1886), 55 L. J., M. C., 63).

A person having custody, charge, or care of anyone

* See R. v. O'Shay, *ante*, page 63.

† *I.e.*, inducing her to part with her virtue for the first time (R. v. Moon (1910), 79 L. J., K. B., 505).

between the ages of 4 and 16 can be punished, by £25 fine or [and] 6 months' hard labour, for allowing it to reside in or frequent a brothel (Children Act 1908, sec. 16).

Detention of Females.

To detain any female against her will—

(*a*) Anywhere, with intent that she may be unlawfully and carnally known, or

(*b*) In a brothel*—is a misdemeanour, punishable by 2 years' imprisonment.

In either case—to withhold any wearing apparel or property of such female, or to threaten legal proceedings if such female takes away with her wearing apparel lent or otherwise supplied to her—constitutes detention, if done with intent to compel or induce such female to remain. No civil or criminal proceedings can be taken against such female for taking away or being found in possession of wearing apparel necessary to enable her to leave (Criminal Law Amendment Act 1885, sec. 3).

Search Warrant.

On oath made before him by a parent, relative, or guardian of a female, or any person acting *bonâ fide* in her interest, of reasonable suspicion that she is detained within his jurisdiction by any person for unlawful carnal knowledge, *and*

(*a*) Is under 16, or

* It is a nuisance at Common Law to keep a brothel or gaming house or disorderly house, punishable by fine and imprisonment if convicted on indictment, and by £20 fine or 3 months if summarily convicted. Any person may prosecute, or, under the Disorderly Houses Act 1751, any two ratepayers can compel the police to prosecute. A brothel means a place resorted to by persons of both sexes for purposes of unlawful carnal knowledge, and does not include a house where one woman only receives a number of men (Singleton v. Ellison (1895), 1 Q. B., 607). A tenant who knowingly allows, and a landlord or his agent who knowingly lets, his premises to be used as a brothel is punishable as above (see Criminal Law Amendment Act 1885, sec. 13).

(*b*) Is 16 but under 18, and is detained against her will, or the will of her father or mother or other person having her lawful care or charge, or

(*c*) Is 18, and is detained against her will,

a justice may issue a warrant to a police officer to search for such female and remove her to a place of safety until she can be brought before a justice. The warrant must be executed by the person to whom it is addressed, who may be accompanied by the person laying the information. Any building or place named in the warrant may be entered by force. When the female is brought before a justice, she may be delivered to her parents or guardians or otherwise dealt with as circumstances require. Any person so detaining the female may be arrested by warrant and punished (Criminal Law Amendment Act 1885, sec. 10).

Custody of Females.

When it is proved on the trial of any offence under the Criminal Law Amendment Act 1885, that the seduction or prostitution of a girl under 16 has been caused, encouraged, or favoured by her father, mother, guardian, master, or mistress, the court may divest such person of all authority over her and appoint any other person to be her guardian until 21, but the High Court may rescind or vary such order (48 & 49 Vict., c. 69, sec. 12).

Abduction of Females.

This crime is, in the first three cases named below, a felony punishable by 14 years' penal servitude; and in cases (4) and (5) is a misdemeanour punishable by 2 years' imprisonment.

(1) *From motives of lucre* to take away or detain against her will a female of any age, who is possessed of any interest in any property, or is a presumptive heiress or next-of-kin to a person having any interest in any property, with intent that she may be married or carnally known, is a felony

punishable by 14 years' penal servitude (Offences Against the Person Act 1861, sec. 53). Both in this case and in case (2) *infra*, when the offender is convicted, he is incapable of taking any interest in the woman's property, and (if he has married her) her property is to be settled as the Chancery Division directs on information in the name of the Attorney General (*Ibid.*).

(2) *Fraudulently* to allure, take away, or detain a female under 21, who is possessed of any property or is a presumptive heiress or next-of-kin, out of the possession and against the will of her father or mother or lawful custodian, with intent that she may be married or carnally known, is a felony punishable as in case (1) (*Ibid.*).

(3) *By force* to take away or detain any female of any age with intent that she may be married or carnally known, is a felony punishable as in case (1) (*Ibid.*, sec. 54).

(4) To take or cause to be taken any *unmarried girl under 18*, out of the possession and against the will of her father or mother or lawful custodian, with intent that she may be unlawfully and carnally known, is a misdemeanour punishable by 2 years' imprisonment. But it is sufficient defence to prove reasonable cause for believing the girl was 18 (Criminal Law Amendment Act 1885, sec. 7).

(5) To unlawfully take or cause to be taken (for any purpose whatsoever) *any unmarried girl under 16*, out of the possession and against the will of her father or mother or lawful custodian, is a misdemeanour punishable by 2 years' imprisonment (Offences Against the Person Act 1861, sec. 55). It is a good defence to show that the going away was purely voluntary on the part of the girl, and that the accused in no way persuaded or induced her to leave her father (R. v. Olifier (1866), 10 Cox, 402; R. v. Jarvis (1903), 20 Cox, 249); but if the prisoner persuaded her, or obtained the consent of the parents by false representations, he can be convicted (R. v. Mankletow (1853), Dears, 159). If,

however, the accused did not know, at the time when he took the girl, and had no reason to know, that she was under the lawful charge of another person, he must be acquitted (R. v. Hibbert (1869), 38 L. J., M. C., 61). It is no defence that the prisoner believed, or was told, the girl was 16, if in fact she was not (R. v. Prince (1875), 44 L. J., M. C., 122). The taking need only be temporary, and no intent to have carnal knowledge need be proved (R. v. Booth (1872), 12 Cox, 231; R. v. Prince, *supra*).

Indecent Assault.

This is a misdemeanour, and is punishable—(1) if upon a female, by 2 years' imprisonment; (2) if upon a male, by 10 years' penal servitude. The accused cannot be convicted if it is proved that the person assaulted consented, but it is expressly enacted that a child under 13 is incapable of consenting. If a male consents, both are liable to 2 years under the Criminal Law Amendment Act 1885, sec. 11; and the solicitation of a male to indecency is within the same section. An adult (over 16) who pleads guilty to an indecent assault on a male or female under 16 can be sentenced summarily to 6 months' imprisonment (Children Act 1908, sec. 128).

Abortion.

It is a felony punishable with penal servitude for life—(1) for a pregnant woman to take any poison or drug, or use any instrument, with intent to bring on a miscarriage; or (2) for any person to administer a poison or drug, or use an instrument, with the like intent, whether the woman be pregnant or not. It is a misdemeanour, punishable with penal servitude for 3 years, to knowingly supply the means for procuring abortion (Offences Against the Person Act 1861, secs. 58, 59).

Concealment of Birth.

This is a statutory misdemeanour, punishable by 2 years' imprisonment (Offences Against the Person Act 1861, sec. 60). To secure a conviction it must be proved (1) that a female has been delivered of a child, (2) that the dead body of such child has been traced and identified, and (3) that the man or woman accused, by some secret disposition of the dead body, endeavoured to conceal the birth. It is immaterial whether the child died before, at, or after birth. What is a secret disposition depends on the facts of each case (R. v. Brown (1870), 39 L. J., M. C., 94). If a person is tried for the murder of a child and acquitted, the jury may find (if it appears in evidence) such person guilty of concealment of birth (Offences Against the Person Act 1861, sec. 60). Omission to register a birth within 42 days, or a death within 5 days, is punishable summarily with 40s. fine (37 & 38 Vict., c. 88).

Child Stealing.

(1) Unlawfully, by force or fraud, to take away, decoy, or detain a *child under* 14, with intent to deprive the parent or guardian or other lawful custodian of the possession of the child, or with intent to steal anything on or about the child's person, or (2) to knowingly receive or harbour such child with the like intent—is felony, punishable by 7 years' penal servitude. But no person can be convicted who (*a*) claims a right to the possession of the child, or (*b*) is the mother, or claims to be the father, of a bastard (Offences Against the Person Act 1861, sec. 56). The force or fraud may be practised either on the guardian or on the child (R. v. Bellis (1893), 69 L. T., 26).

Abandonment of Children.

To unlawfully abandon or expose a *child under 2 years old*, so that its life is endangered, or its health is (or is likely

to be) permanently injured, is a misdemeanour, punishable by 5 years' penal servitude (Offences Against the Person Act 1861, sec. 27).

Cruelty to Child or Young Person.

This is now governed by Part 2 of the Children Act 1908, and may be summarized as follows:—

If a person over 16 has the custody, charge or care of any child under 14 or young person under 16, and wilfully assaults, ill-treats, neglects, abandons, or exposes such child or young person, or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child or young person unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person is guilty of a misdemeanour, and punishable—

(*a*) On indictment, by fine up to £100, or (and) 2 years' hard labour; and

(*b*) On summary conviction, by fine up to £25, or (and) 6 months' hard labour.

A parent or other person legally liable to maintain a child or young person can be convicted if he fails to provide adequate food, clothing, medical aid, or lodging for the child or young person, or if (being unable otherwise to do so) he fails to take steps to procure the same under the Poor Law Acts.

A person may be convicted although actual suffering or injury to health (or the likelihood thereof) was obviated by the action of another person; and even after the death of the child or young person.

Upon the trial of any person over 16 for the manslaughter of a child or young person of whom he had the custody, charge or care, the jury may find the accused guilty of the above-named misdemeanours. If it is proved that a person convicted knew he was interested in any money accruable

or payable on the death of the child or young person, then—

(*a*) Upon conviction on indictment, the punishment may be £200 fine or 5 years' penal servitude; and

(*b*) Upon a summary conviction, the court in determining the sentence must consider that the person was so interested and had such knowledge.

Where it is proved that the death of an infant under 3 years of age was caused by suffocation (not caused by disease or the presence of any foreign body in the throat or air-passages of the infant) whilst the infant was in bed with some person over 16, who at the time of going to bed was under the influence of drink—that person can be convicted of the above misdemeanour of cruelty.

Any one may prosecute. Appeal from summary conviction lies to quarter sessions. Proceedings for a summary conviction must be taken within 6 months. If a person is convicted of cruelty to a child, or committed for trial, or bound over to keep the peace towards the child, the court which has the case before it (or any petty sessional court on anybody's application) may award the custody of the child to any fit person until it is 16. A child of tender years may give evidence without being sworn, but this is not sufficient for a conviction unless corroborated by other material evidence. The case may be tried in the absence of the child if its evidence is not essential for justice and its presence would endanger its health. The court may presume the age of the child, but that of the accused must be proved (sec. 123).

Apprentices and Servants.

If a master or mistress is legally liable to provide food, clothing, or lodging, for a servant or apprentice, and wilfully refuses or omits to do so, or maliciously causes bodily harm—and thereby endangers the life or permanently injures the health of such servant or apprentice, it is a

misdemeanour punishable by 5 years' penal servitude (Offences Against the Person Act 1861, sec. 26). Also a master who is legally liable to provide necessary food, clothing, medical aid, or lodging for his servant or apprentice, and wilfully refuses or neglects to do so, whereby the health of such servant or apprentice is, or is likely to be, seriously injured—can be fined £20 or 6 months on summary conviction or (at his option) on indictment, under sec. 6 of the Conspiracy and Protection of Property Act 1875, or (if the apprentice's master is a workman) under sec. 6 of Employers and Workmen Act 1875. It is submitted that these provisions can only apply to those of tender years, and not to a servant having free control of her actions and able to take care of herself (R. v. Smith (1865), 34 L. J., M. C., 153).

Protection of Children.

The Children's Dangerous Performances Act 1879 enacts that any person can be fined £10 on summary conviction for causing a child under 14 to take part in a public exhibition or performance whereby its life or limbs are endangered; and if an accident happens causing bodily harm to the child, its employer can be indicted for the misdemeanour of assault, and the court which convicts the employer may also award the child £20 compensation. The Dangerous Performances Act 1897 extends these provisions to males under 16 and females under 18; but requires the written consent of the chief local police officer before a prosecution, unless actual harm has been done.

If a person over 16 allows a child under 7 in his care to be in a room with an open fire grate without taking reasonable precautions against its being burned or scalded, and the child thereby suffers death or serious injury—that person can be fined £10 (Children Act 1908, sec. 15).

Illegal employment of children and young persons is punishable summarily with £25 fine or (and) 3 months' hard

labour ; but a petty sessional court may grant a licence for a child over 10 to be employed on licensed premises to sing, play or perform for profit or to be trained as an acrobat.

Illegal employment means causing or allowing—

(*a*) A boy or a girl under 16 to be at any time in any place to beg or receive alms (Children Act 1908, sec. 14) ; or

(*b*) A boy under 14 or girl under 16 to be in a street or premises licensed for intoxicants between 9 p.m. and 6 a.m. to sing or play or perform or be exhibited for profit or to sell anything ; or

(*c*) A child under 11 to be at any time in any street or licensed premises or place of public amusement where a charge is made for admission, to sing or play or perform or be exhibited for profit or to sell anything ; or

(*d*) A child under 16 to be trained as an acrobat or for a dangerous performance (Cruelty to Children Act 1904, secs. 2, 3).

Assault.

This is the offer to do violence to another, coupled with ability to do it, *e.g.*, shaking a fist in a man's face or pointing a gun at him. Battery is the actual touching of another in an angry, rude or hostile manner, *e.g.*, striking a person. Common assault or battery is an indictable misdemeanour at Common Law, punishable by 1 year's imprisonment (Offences Against the Person Act 1861, sec. 47), and any one may indict the offender (R. v. Gaunt (1895), 73 L. T., 585) ; but it is usually punished on summary conviction by fine up to £5 or imprisonment up to 2 months. Aggravated assaults (*i.e.*, on a male under 14, or on any female) may be punished summarily with fine up to £20 or imprisonment up to 6 months. Justices may also bind the offender over to keep the peace for 6 months (Offences Against the Person Act

1861, secs. 42, 43). But justices may not give more than 6 months' imprisonment altogether in respect of several assaults committed on the same occasion (Summary Jurisdiction Act 1879, sec. 18), *e.g.*, for upsetting a form on which six persons are sitting, the punishment may be £5 or 2 months in each case, but for non-payment of the £30 the total imprisonment may not exceed 6 months. A case of common assault cannot be tried summarily except at the instance of the aggrieved person (Nicholson v. Booth (1888), 57 L. J., M. C., 44). As to certificates of result, see *ante*, pages 9, 10. Justices cannot adjudicate summarily upon any assault accompanied by attempt to commit a felony, or which from any other circumstances they consider ought to be prosecuted by indictment; and cannot determine summarily any assault in which a question arises as to the title to lands, tenements, or hereditaments, or any interest therein, or as to any bankruptcy, insolvency, or execution (Offences Against the Person Act 1861, sec. 46). But in these cases the justices may commit for trial, even if the person assaulted does not prosecute (R. v. Gaunt (1895), 60 J. P., 90). Any person convicted on indictment of assault may be condemned in costs and (in default of payment) to an extra 3 months beyond the sentence (24 & 25 Vict., c. 100, sec. 74).

Assault on a constable in the execution of his duty can be punished on summary conviction by £25 fine or by 6 months' (or if previously convicted within 2 years, by 9 months') hard labour, and there is no appeal unless imprisoned without the option of a fine (Prevention of Crimes Act 1871, sec. 12). Resisting or wilfully obstructing a constable in the execution of his duty is punishable by £5 fine (Prevention of Crimes Act 1885, sec. 2); and a person who warns someone, driving a motor car at an illegal speed, of a police trap is guilty of so obstructing (Betts v. Stevens (1910), 79 L. J., K. B., 17), though he would not be guilty if the person

warned was driving at a legal speed (Bastable v. Little (1907), 76 L. J., K. B., 77).

An assault which occasions actual bodily harm, *or* grievous bodily harm, *or* unlawful wounding, is a misdemeanour, punishable by 5 years' penal servitude. To wound, or cause grievous bodily harm, or shoot, or attempt to discharge any loaded arm, *with intent* to maim, disfigure, or disable, or to do some other grievous bodily harm, or to resist lawful arrest —is felony punishable with penal servitude for life. Actual bodily harm includes any hurt or injury calculated to interfere with health or comfort, and need not be grievous bodily harm. Grievous bodily harm need not be permanent or dangerous, so long as it seriously interferes with health or comfort (R. v. Ashman (1858), 1 F. & F., 88). To constitute wounding, the internal (R. v. Smith (1837), 8 C. & P., 173) or external (R. v. McLoughlin (1837), 8 C. & P., 635) skin must be divided; but the means is immaterial, *e.g.*, a bite, a kick, a hammer. To maim is to injure any part of a man's body which renders him less able to defend himself in fighting; to disfigure is to do an external injury which detracts from a person's appearance; and to disable is to do something which creates a permanent disability (R. v. Boyce (1824), 1 Mood, 29). An assault with intent to commit a felony, *or* on a constable in the execution of his duty or on anybody helping him, *or* on anyone with intent to prevent the arrest of anybody for any offence, is a misdemeanour punishable by 2 years' hard labour. An attempt to choke, suffocate or strangle anyone *with intent* to commit any indictable offence, is felony punishable by penal servitude for life and whipping. To administer or apply any stupifying or overpowering thing *with intent* to commit any indictable offence is felony, punishable with penal servitude for life. To unlawfully administer any noxious or destructive thing or poison—(*a*) so as thereby to endanger life or do grievous bodily harm, is felony, 10 years'

penal servitude; (*b*) with intent to injure or annoy, is misdemeanour, 3 years' penal servitude. To unlawfully impede the saving of life from a vessel in distress or wrecked; *or* unlawfully to do grievous bodily harm by any explosive substance; *or* to cause an explosion, or to send any explosive or dangerous thing, or to throw any corrosive fluid or any destructive or explosive substance, *with intent* to do grievous bodily harm, whether such harm is caused or not—is felony, penal servitude for life. (See Offences Against the Person Act 1861, secs. 42, 47, 20, 17, 18, 19, 38, 21, 22, 23, 24, 28, 29.) As to indecent assaults, *ante*, page 70. The court will not pass judgment for an assault while a civil action is pending (R. v. Mahon (1826), 4 A. & E., 575). Assault with intent to rob is felony, 5 years' penal servitude; but if by a person armed with an offensive instrument, or by two or more persons, is felony, penal servitude for life (Larceny Act 1861, secs. 42, 43).

If a person having the charge of any carriage or vehicle causes bodily harm by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, he is liable to 2 years' hard labour, under the Offences Against the Person Act 1861, sec. 35. Any public or private vehicle, and even a bicycle, is within this provision (R. v. Parker (1895), 59 J. P., 793). By threats or force to obstruct any clergyman or minister in the execution of his duty, or any constable in the execution of his duty, is punishable with 2 years (*Ibid.*, secs. 36, 38). But to assault any officer when exercising his duty to save wreck exposes to 7 years' penal servitude (*Ibid.*, sec. 37).

Affray is where two or more persons fight in a public place, *e.g.*, a prize fight in a country lane, and is a Common Law misdemeanour; but mere casual presence at a prize fight, or assistance rendered after the fight is over, is not aiding and abetting the affray (R. v. Coney (1882), 8 Q. B. D., 534).

3.—Offences against Property.

Larceny.

Larceny is theft punishable at Common Law. It is felony. Simple larceny (and any theft declared by statute to be felony punishable like simple larceny, *e.g.*, under secs. 31 and 32 of Larceny Act 1861) is punishable by 5 years' penal servitude; but after a previous conviction for felony, by 10 years; and after conviction for any indictable misdemeanour under the Larceny Act 1861, or after two summary convictions under that Act or the Malicious Damage Act 1861, by 7 years (Larceny Act 1861, secs. 7 to 9). The law as to larceny is amended and partly consolidated by the Larceny Acts 1861, 1868, 1896 and 1901; but there is no statutory definition of larceny.

Larceny is the knowingly wrongful taking and carrying away, of any corporeal movable thing, belonging to another, from any place, with intent to deprive the owner permanently of his property therein.

The material points are: (1) the thing taken, (2) the unlawful taking and carrying away, and (3) the intent.

At Common Law, larceny could only be of purely personal chattels, and consequently not of (1) things savouring of the realty, *e.g.*, title deeds, buildings, fixtures, minerals, a bed of gravel, growing crops; (2) a chose in action, *e.g.*, bonds, bills; (3) a corpse; (4) wild animals, unless kept in captivity for food or profit; and (5) domesticated animals not kept for food or labour or profit, *e.g.*, dogs, ferrets, cats. If A cuts his grass and then B takes it away unlawfully, B commits larceny; but if B wrongfully cuts and removes the grass, this is only trespass. If a poacher kills and takes away a hare, this is not larceny. If he kills and hides the hare and then returns for it, this is not larceny, as he never intended to abandon it, and the killing and taking are one

continuous act; but if he killed the hare and really meant to abandon it, but afterwards returns and takes it away, or if he comes across a dead hare and takes it, this is larceny (R. v. Townley (1871), 40 L. J., M. C., 144). But the stringency of the Common Law rule has been largely relaxed by the Larceny Act 1861, which makes punishable the stealing of fixtures (felony, 5 years), materials of buildings or fixtures (felony, 5 years), minerals (felony, 2 years), trees, plants, muniments of title (felony, 5 years), valuable securities (felony, 5 years), wills (felony, life), deer, hares, dogs, etc.

By this Act, secs. 18 to 22, the theft of any dog, bird, or beast, or other animal usually kept in confinement or for a domestic purpose (but which is not the subject of larceny at Common Law) is punishable summarily with £20 fine beyond the value or 6 months; while a second offence is a misdemeanour punishable, in the case of a dog, with 18 months', and in the other cases with 12 months', hard labour. To steal a monkey from a cage in a menagerie is larceny; but from a private owner or the Zoo, would only come under the provision just set out, which also applies to cats, ferrets, and live things kept for whim or pleasure.

Stealing, or damaging with intent to steal, any tree or shrub (1) in a park or garden, or in ground belonging to a dwelling, beyond the value of £1, or (2) elsewhere, beyond the value of £5—is felony, 5 years' penal servitude. If the value is one shilling at least, the punishment is £5 fine beyond the value on summary conviction; and on a second conviction summarily, 12 months' hard labour; and a third offence is felony, 5 years' penal servitude. Theft of a fence, stile, or gate is punishable summarily with £5 fine beyond the value, and on a subsequent conviction with 12 months' hard labour. Theft of any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hothouse, greenhouse, or conservatory is punishable, the first time summarily with 6 months' hard labour, or £20

fine beyond the value, and a subsequent offence is felony, 5 years' penal servitude. Theft of any cultivated root or plant used for food of man or beast, or for medicine, or distilling, or dyeing, or manufacturing purposes, in any open or enclosed land, is punished summarily—the first time with 1 month or 20s. fine, and on subsequent conviction with 6 months.

For other instances of statutory thefts see secs. 10 to 39, 74, and 77 to 87 of the Larceny Act 1861.

By the Misappropriation by Servants Act 1863, if a servant steals his master's corn, or other food, to give his master's horses or other animals an increased allowance, he is not guilty of felony, but can be punished on summary conviction by 3 months' hard labour, or by £5 fine; and if he is indicted for felony, he may be found guilty and punished under this statute.

It is necessary that the alleged owner of the thing stolen should have some (general or special) ownership of it, *e.g.*, if goods are stolen from a bailee, the property may be laid either in the bailor or bailee, or alternatively; and it must have been taken out of the owner's actual or constructive possession. A man has "possession" of things in his house, and on his property, and of whatever his servant has received from him. Thus if A sends his servant with a cart to buy coal, and on the way home the servant sells part of that coal, he is guilty of larceny, for the cart (and therefore the coal therein) is in the possession of A, though in the custody of B, the servant (R. v. Reed (1854), Dears, 168, 257). But if A's servant receives money from B for A and hands it to another servant of A, the money is in the possession of the second servant and not of A, so that if the second servant misappropriates it, his offence is not larceny but embezzlement (R. v. Masters (1848), 1 Den., 332). If X steals Y's purse, and Z steals it from X, Z is guilty of larceny, for X had possession.

There must be more than a mere handling; there must be asportation or carrying away. The indictment must contain the words, "feloniously did steal, take, and carry away." But the slightest complete removal of an article from its previous position is sufficient. So that if A draw my pocket-book partly out of my pocket and it falls back, or if the book is drawn clean out of the pocket and falls back, each is larceny, for the taker had complete control for a short time (R. v. Thompson (1825), 1 Mood, 78). It is larceny if the thief snatches an earring out of a lady's ear but it is caught in her hair and there left (R. v. Lapier (1784), Leech, 320), or if a watch and chain snatched out of a pocket and buttonhole are caught by a button (R. v. Simpson (1854), 6 Cox, 422), or if a sword is drawn partly out of the scabbard (R. v. Walsh (1824), 1 Mood, 14). So is shifting a parcel from one end of a vehicle to another, or taking plate out of a chest and laying it on the floor, or causing a horse to be led out of a stable for the thief to mount (R. v. Pitman (1826), 2 C. & P., 423). But, if goods are fastened to a shop door by a string, and A takes them up with intent to steal, there is no larceny (but only an attempt) unless the string is broken. A postman who retains a letter containing money can be convicted of larceny, for it is his duty either to deliver it or to hand it back to the post office (R. v. Poynton (1862), 9 Cox, 249).

The felonious intent—to deprive the owner of his property in the thing taken—must exist at the time of taking the thing. Consequently, if goods are taken under a *bonâ fide* but unfounded claim of right, there is no larceny, but merely a trespass (R. v. Wade (1869), 11 Cox, 549). If I take my neighbour's plough out of his field and use it for a day's ploughing on my land, and then replace it where I found it, this is trespass but not larceny. But if I take B's goods wrongfully, and try to sell them to B, this is larceny (R. v. Hall (1849), 2 C. & K., 947). There need be no intent

to make a pecuniary profit out of the taking, *e.g.*, where A backed B's horse down a disused pit in order to save an accomplice in crime, and the horse was killed, A was convicted of larceny (R. v. Cabbage (1815), R. & R., 292); and it is larceny for a servant to destroy a letter in the hope of suppressing enquiries as to her character which she supposed were contained in it (R. v. Jones (1847), 2 C. & K., 236). It is for the jury to decide whether the accused took the goods knowingly, or by mistake, or *bonâ fide* under a claim of right, and whether he meant to return them to the owner, or to deprive him of them altogether (R. v. Farnborough (1895), 64 L. J., M. C., 270). If A buys a desk and afterwards discovers money in a secret drawer therein and appropriates it, he is guilty of larceny unless he had reason to believe he bought the desk with its contents; but if the desk had been sent to a carpenter for repairs and he found and kept the money, that would always be larceny (Cartwright v. Green (1802), 2 Leach, 952).

If goods are sold on credit and delivered, no subsequent conversion of them by the buyer can be larceny, for the owner has of his own free will parted with the property therein, as well as the possession (R. v. Harvey (1787), 1 Leach, 467). And it is the same if the goods are obtained from the owner's servant, provided he had full authority to pass the property therein (R. v. Prince (1869), 38 L. J., M. C., 8). But if the servant's authority is limited, it is otherwise, *e.g.*, in R. v. Longstreeth (1826), 1 Mood, 137, a carrier's servant had no authority to part with the goods except to the consignee, and X, who obtained them from the servant by falsely pretending to be the consignee, was convicted of larceny.

As all felony includes trespass, a bailee could not commit larceny at Common Law, unless he broke bulk, *e.g.*, opened a bale of goods and abstracted part of them; but sec. 3 of the Larceny Act 1861 now enacts that a bailee of any

chattel, money, or valuable security is guilty of larceny if he fraudulently converts the same, though he does not break bulk. There must be a bailment, and a conversion, and the conversion must be fraudulent—*i.e.*, a conversion with no claim of right, and with intent permanently to deprive the owner of his property, so the bare fact that a bailee pawns the goods is not sufficient (R. v. Wynn (1887), 16 Cox, 231), and it must be the duty of the bailee to redeliver the very thing entrusted to him, or to deliver that identical thing to another (R. v. Hassall (1861), 30 L. J., M. C., 175), and it will not do if the bailee is at liberty or is bound to convert the particular article into something else before he returns it or delivers it to the third party to whom he is instructed to deliver it (*Re* Bellencontre (1891), 2 Q. B., at p. 137). Where A handed a horse to B for sale at a fair, and A sent his wife to see the horse sold and bring back the money, and the wife saw B sell the horse to C and receive the money, and the wife at once asked B for the identical money, but B absconded with it, it was held B was guilty of larceny (R. v. De Banks (1884), 53 L. J., M. C., 132). So if A gives B money to buy specific goods for him (half a ton of coal) and B buys the goods in his own name, but specifically appropriates them (*e.g.*, by putting them in his own cart), and then fraudulently converts part of them, B can be convicted of larceny (R. v. Bunkall (1864), 33 L. J., M. C., 75). Or if A instructs B to buy goods and gives him money which is to be specifically used to pay for those goods, and B misappropriates that money (R. v. Aden (1873), 12 Cox, 512). Or if a person is sent to the bank to cash a cheque, and after he has cashed it absconds with the money, or if A entrusts a debenture or goods to B to pledge for a stated amount, and B misappropriates the amount (R. v. Holloway (1897), 18 Cox, 631). But a land agent who has collected rents, or an auctioneer who has sold goods and misappropriates the money, cannot be convicted of larceny as a bailee, because he is under

no obligation to hand over the identical coins he received (R. v. Hassall, L. & C., 58), though he does now come under the Larceny Act 1901. If A gives B a bank note to get change, and B is to be allowed to go out of A's sight with the note, B is not guilty of larceny if he converts the note to his own use, though he may now be convicted of a misdemeanour under the Larceny Act 1901. But if C offers to give D change for a note and on getting the note runs off with it instead of giving change, C is guilty of larceny (Oliver's Case (1811), 4 Taunt., 274; R. v. Thompson (1864), 33 L. J., M. C., 53).

At Common Law larceny must be of another's goods. But where a man takes his own goods from a bailee and the effect is to charge the bailee, this is larceny (R. v. Wilkinson (1821), R. & R., 471). And by the Larceny Act 1868, if any partner, or if one of two or more beneficial owners of property (as a joint tenant or tenant in common), steals or embezzles the property of the partnership or beneficial owners, he may be convicted of larceny or embezzlement like a stranger. (See R. v. Tankard (1894), 70 L. T., 42, showing that a conviction can be got if the property is laid in the individual beneficial owners, although together they form an association illegal under the Companies Acts.)

At Common Law, husband and wife could not commit larceny of each other's goods, though if the wife gave the husband's goods to her adulterer, it was larceny in him (R. v. Featherstone (1854), Dears, 369). But now, by secs. 12 and 15 of the Married Women's Property Act 1882, husband and wife may prosecute each other for any crime to property just as if they were strangers, provided they are living apart and the crime was committed when they were living apart, or the property was wrongfully taken when one was leaving or deserting the other. As to the form of an indictment against an eloping wife for stealing her

husband's goods, see R. v. James (1902), 71 L. J., K. B., 211, which decides it need not allege she was his wife or stole the goods when leaving him.

When will the appropriation of goods found amount to larceny? Only where the finder has a reasonable belief *at the time of finding* that the true owner can be found (R. v. Knight (1871), 12 Cox, 102), and yet then intends to take the absolute ownership (R. v. Thurborn (1849), 2 C. & K., 831; R. v. Moore (1861), L. & C., 1; R. v. Glyde (1868), 37 L. J., M. C., 107). The goods must have been actually lost, or the finder must *bonâ fide* and on reasonable grounds think they are lost. Thus, to take a horse feeding on a common would be larceny, for there is no presumption that it is lost. But to pick up a purse in the highway and appropriate it is not larceny, unless the finder had reason to think, when he found it, either that he knew, or could reasonably discover, the owner (R. v. Glyde, *supra*). If a railway company's servant finds an article in a railway carriage, or on the company's premises, and keeps it instead of taking it to the lost property office, this is larceny (R. v. Pierce (1852), 6 Cox, 117). And presumably if a passenger appropriates an article found in the carriage and gives no information to the company's servants, it is larceny if the owner could have been found by enquiry (R. v. Peters (1843), 1 C. & K., 245).

If A has to pay money to B, and by mistake pays more than he ought to, and B is at the time aware of the mistake and keeps the excess, B is guilty of larceny (R. v. Middleton (1873), 42 L. J., M. C., 73; R. v. Ashwell (1886), 55 L. J., M. C., 65; R. v. Flowers, *Ibid.*, 179). The two latter cases show that if a person receives money or goods innocently, his subsequent fraudulent appropriation is not larceny.

Larceny is often effected by a trick. Here the thief employs some device with intent to steal, and the owner parts with the possession of his goods temporarily, without

intending to transfer his ownership—*e.g.*, the confidence trick (R. v. Standley (1816), R. & R. 305), or ringing the changes (R. v. Hollis (1883), 12 Q. B. D., 25), or ring dropping (R. v. Patch (1782), Leech, 238), or welshing. Thus, where A made a bet with a bookmaker at Ascot Races, and handed him 5s. and was to receive 35s. and his own 5s. if a given horse won, and the horse did win, but during the race the bookmaker walked away and never paid, and the jury found that when the bookmaker received the 5s. he meant to keep it in any event—the bookmaker was convicted of larceny (R. v. Buckmaster (1888), 57 L. T., 720). So it is larceny to get a cigarette out of an automatic machine by putting in a metal disc instead of a penny (R. v. Hands (1887), 16 Cox, 188).

The thing stolen must be of some intrinsic value. But the value need not necessarily be computable in coin (R. v. Morris (1840), 9 C. & P., 349), nor need it be of value to third persons if of value to the owner (R. v. Bingley (1833), 5 C. & P., 602). Thus a man can be convicted for larceny of a piece of paper (R. v. Perry (1845), 1 C. & K., 725), or of the buried carcase of a diseased pig (R. v. Edwards (1877), 13 Cox, 384). Since the distinction between grand larceny to the value of one shilling at least and petty larceny of less value was abolished in 1827, it is no longer necessary to state the value of the thing stolen in the indictment, except where a special value is named in a statute as an ingredient of the offence or an aggravation of punishment (Criminal Procedure Act 1851, sec. 24).

An indictment for simple larceny alleges: "That A B on the day of in the year of our Lord 1910, one overcoat and two umbrellas of the goods and chattels of C D feloniously did steal take and carry away."

The thief may be tried in any place in which he has had any of the stolen property.

Compound larceny is theft attended by aggravated

circumstances, which may arise from (1) the nature of the property stolen, *e.g.*, goods being manufactured, or (2) the manner of the stealing, *e.g.*, with violence, or (3) the place from which stolen, *e.g.*, from the person, or (4) the person who steals, *e.g.*, a clerk or servant. Stealing horses, cattle, or sheep; or goods being manufactured from wool, silk, etc.; or goods in a vessel in harbour or in distress, or wrecked goods; or Government property by a public officer; or by a clerk or servant; or from the person—is felony punishable by 14 years' penal servitude (Larceny Act 1861, secs. 10, 40, 62, 63, 64, 67-70).

Robbery is the felonious and forcible taking from the person, or in the presence of another, against his will, of goods or money, by violence, or putting him in fear for person, family, or house; and is punished by 14 years' penal servitude. But if actual violence is used, or an offensive weapon, or more than one person takes part in the robbery, penal servitude for life may be awarded, with whipping three times for a male. The essence of simple robbery and robbery with violence is the force or putting in fear.

An indictment for robbery alleges: "That A B on the day of in and upon one C D did make an assault, and him the said C D in bodily fear and danger of his life then feloniously did put, and the moneys of the said C D to the amount of £4, and one silver watch of the goods and chattels of the said C D from the person and against the will of the said C D, then feloniously and violently did steal, take and carry away."

Larceny from the person includes all cases of theft from the person which do not amount to robbery, and is punishable by 14 years' penal servitude.

Embezzlement.

Embezzlement is the unlawful appropriation by a clerk or servant of any chattel, money, or valuable security delivered

to or received by him for or in the name or on the account of his employer (Larceny Act 1861, sec. 68). It must be proved that (1) the accused was a clerk or servant, (2) he received the property for his master, and (3) he unlawfully appropriated it. All three are questions of fact. To be a clerk or servant, the accused must be bound to obey all lawful orders of his employer in connection with the employment (R. v. Negus (1873), 2 C. C. R., 34); but employment on one occasion is sufficient, so that if a farmer has sold a cow and hires a drover to take it to the buyer and bring back the money, the drover is guilty of embezzlement if he misappropriates the money (R. v. Hughes (1832), Mood., 370). It does not matter whether the servant is paid by salary, or commission, or a share of profits (R. v. McDonald (1861), L. & C., 85). The distinction between this crime and larceny by a clerk or servant is—that in larceny the property comes into the actual possession of the master, and is *afterwards* appropriated by the clerk; whilst in embezzlement, the clerk receives the property and appropriates it *before* it comes into the master's possession. Thus, for a shopman to take money from the till is larceny, but to receive it from a customer and at once pocket it, is embezzlement. A clerk or servant indicted for larceny may be convicted of embezzlement, and *vice versâ* (Larceny Act 1861, sec. 72). Each offence is a felony punishable by 14 years' penal servitude. Three distinct acts of embezzlement, committed against the same employer within an inclusive period of six months, can be charged in one indictment; and the same rule applies to larceny.

An indictment for embezzlement states: "That A B on the day of , being then employed as clerk or servant to C D did then and whilst he was so employed as aforesaid receive and take into his possession certain money to a large amount to wit to the sum of £18 for and in the name and on the account of the said C D his master,

and the said money then fraudulently and feloniously did embezzle; and so the jurors aforesaid upon their oath aforesaid do say that the said A B then in manner and form aforesaid the said money the property of the said C D his said master feloniously did steal, take and carry away."

Fraudulent Misappropriations.

If a trustee under an express trust created by deed or will or written instrument, or an executor or administrator, or a liquidator, or an official receiver or trustee in bankruptcy, fraudulently misappropriates any of the trust property, he is liable to 7 years' penal servitude for misdemeanour; but no criminal proceedings can be taken without the sanction of the Attorney General, and if a civil action has been brought against the trustee, the sanction of the civil judge must be also obtained (Larceny Act 1861, sec. 80). If the misappropriation is first discovered from the trustee's evidence on oath in a civil action, he cannot be prosecuted (Larceny Act 1861, sec. 85); but if first discovered in his public examination in bankruptcy, he can be prosecuted, though such examination is not evidence in the prosecution (Bankruptcy Act 1890, sec. 27).

It is a misdemeanour punishable by 7 years, for—

(*a*) An attorney for sale or transfer of any property to fraudulently convert the same; or

(*b*) A factor to fraudulently obtain advances on security of his principal's goods or documents of title to goods; or

(*c*) A director or officer of a corporate body or public company to fraudulently misappropriate its property or to keep its accounts fraudulently or to wilfully destroy or falsify its books (Larceny Act 1861, secs. 77 to 87).

The Larceny Act 1861 made it a misdemeanour for a person carrying on the business of an agent to misappro-

priate money entrusted to him with a direction in writing (secs. 75, 76); but it was often impossible to prove more than an oral direction. Consequently this provision is now repealed by the Larceny Act 1901, which enacts that after the year 1901, if *any person whomsoever*—

(*a*) Being entrusted (either solely or jointly with any other person) with any property, in order that he may retain in safe custody, or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof, or any proceeds thereof; or

(*b*) Having (either solely or jointly with any other person) received any property for or on account of any other person—

fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property, or any part thereof, or any proceeds thereof, he is guilty of a misdemeanour, and liable to 7 years' penal servitude. But this does not apply to or affect any trustee on any express trust created by a deed or will or written instrument or any mortgagee in respect of any act done by the trustee or mortgagee in relation to the property comprised in or affected by such trust or mortgage. (As to the express trustee, see *ante*, page 90). So that since 1901 if a client gives £200 to a solicitor with verbal instructions to advance it on mortgage to X, and the solicitor misappropriates it; or if debts or rents are collected by an accountant, who does not pay over the money—he can now be punished.

False Pretences.

Obtaining by false pretences any chattel, money, or valuable security, with intent to defraud, is a misdemeanour, and may be punished by 5 years' penal servitude (Larceny Act 1861, sec. 88). To obtain a conviction, the prosecution must prove (1) a representation that some fact exists or existed (62 & 63 Vict., c. 22, sec. 3) made orally, or in writing

(*e.g.*, by a begging letter), or by conduct (*e.g.*, by giving a cheque in payment for goods drawn on a bank when the giver has no account), (2) its falsity, (3) that the accused knew it was false (R. v. Henderson (1841), 2 Mood., 192), (4) that the property was obtained by means of the false pretence (R. v. Mills (1857), 7 Cox, 263; R. v. Jones (1884), 15 Cox, 475), and (5) the intent to defraud. The indictment must allege intent to defraud or it is incurably bad (R. v. James (1871), 12 Cox, 127); and there must in fact be such intent, though it may be inferred from the facts given in evidence (R. v. Naylor (1865), 35 L. J., M. C., 61; R. v. Gray (1891), 17 Cox, 299).

If a person fraudulently represents as an existing fact that which is not an existing fact, and thereby gets money or goods or a valuable security, he can be convicted; but a promise as to future conduct not intended to be kept is never by itself a false pretence, and this has been recognized by statute. For the Summary Jurisdiction Act 1899, sec. 3, directs justices, when they propose to deal summarily with a charge of false pretences, to tell the accused that a false pretence means a false representation by words, writing or conduct, that some fact or facts existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence. Thus B is not guilty of false pretences—if A sells goods to B and lets B take them away on his statement that he will return in two hours and pay for them (R. v. Burrows (1869), 11 Cox, 258), or if B borrows money from A on the untrue statement that he is going to pay his rent (R. v. Lee (1863), 9 Cox, 304), or that he needs the money to enable him to take a public-house (R. v. Woodman (1879), 14 Cox, 179). If A courts B and promises to marry her, and thereby induces her to give him money to buy furniture and spends it, and turns out to be already married, A cannot be convicted of false pretences; but if A further said he was a single man and so procured the money, he can

be convicted (R. v. Jennison (1862), 9 Cox, 158). If A gets a deposit of £25 from B as security for B's fidelity as a clerk on the pretence that he is carrying on a good business, A can be convicted if he is carrying on no business (R. v. King (1897), 1 Q. B., 214), but not if he is carrying on a business which is worthless (R. v. Williamson (1869), 11 Cox, 328).

By the Moneylenders Act 1900, if a moneylender by any false statement, *or promise*, or dishonest concealment of material facts, fraudulently induces a person to borrow money or attempts to do so, he is guilty of misdemeanour and punishable by £500 fine or (and) 2 years' hard labour (sec. 4).

The essential difference between false pretences and larceny is—that in larceny the owner of the property has no intention to part with his right of ownership in the thing stolen, though he may intend to temporarily part with the possession; whilst in false pretences, the owner does intend to part with his right of ownership, but that intention is produced by the false pretence (R. v. Barnes (1850), 5 Cox, 112). Thus the purse trick is false pretences (R. v. Solomons (1890), 62 L. T., 672); while welshing is larceny (*ante*, page 87). If X by an untrue statement of facts procures a loan of some chattel from Y, X is not guilty of false pretences, for Y never intended to part with the ownership (R. v. Kilham (1870), 39 L. J., M. C., 109); but it is otherwise if the loan was of money (R. v. Crossley (1837), 2 M. & R., 17), for the property passes as soon as the money is handed over.

If A represent certain plated spoons to be Elkington's manufacture when he knows they are not, or a chain to be 15 carat gold when he knows it is only 6 carat, and so induces B to buy, A is guilty of obtaining money by false pretences (R. v. Williamson (1869), 11 Cox, 328; R. v. Ardley (1871), 12 Cox, 23). But an untrue statement as to the quality of an article is not false pretences, if it is

merely commendation or exaggerated praise or puffing (R. v. Bryan (1857), 7 Cox, 312; R. v. Foster (1877), 46 L. J., M. C., 128).

When the false pretence is proved but it did not deceive—as where a pawnbroker stated he took a chain in pledge not because the prisoner said it was silver but because he tested it himself—the prisoner can be convicted of *attempting* to obtain by false pretences (R. v. Roebuck (1856), 7 Cox, 126).

The indictment must state, with sufficient certainty, such facts as are necessary to enable the accused to see clearly with what he is charged; and the real pretence which operated on the prosecutor's mind must be set out (R. v. Buller (1864), 33 L. J., M. C., 171); but only general intent to defraud need be alleged, and the ownership of the thing obtained need not be alleged (Larceny Act 1861, sec. 88; R. v. Hazelton (1874), 13 Cox, 1).

An indictment for obtaining goods by a cheque which accused knew would not be paid, might allege: "That A B on the day of unlawfully, knowingly and designedly did falsely pretend to C D that a certain paper writing which he the said A B then produced and delivered to the said C D then was a good and valid order for the payment of money to wit for the sum of £3 in money, and that he the said A B then had authority to draw a cheque upon a certain bank known as the Bank, situate at , by means of which said false pretences the said A B did then unlawfully obtain from the said C D one armchair [or the sum of Three pounds good and lawful money in current coin of the realm]. Whereas in truth and in fact the said paper writing which the said A B then produced and delivered to the said C D was not then a good and valid order for the payment of the sum of £3 in money, and whereas the said A B in truth and in fact had not then authority to draw a cheque upon the said bank known

as the Bank, situate at , as he the said A B well knew at the time when he did so falsely pretend as aforesaid."

If doubtful whether given facts constitute larceny or false pretences, prosecute for the latter, because the Larceny Act 1861 (sec. 88) permits a conviction for false pretences if the evidence proves larceny, and thus obviates an acquittal and a second indictment.

To obtain by false pretences any chattel which is not a valuable security (as defined in sec. 1 of the Larceny Act 1861), and is not the subject of larceny at Common Law—*e.g.*, a dog (R. v. Robinson (1859), 28 L. J., M. C., 58) or growing crops (R. v. Summers, at Kent Winter Assizes, 1888-9)—is *not* punishable as false pretences.

On a prosecution for false pretences, evidence can be given of prior false pretences to other persons to satisfy the jury that the prisoner knew his present pretence was false (R. v. Francis (1874), 43 L. J., M. C., 97), and of other similar transactions (R. v. Cooper (1876), 45 L. J., M. C., 15); and evidence of subsequent false pretences of the same nature (R. v. Holt (1861), 30 L. J., M. C., 11) can be given. But this evidence of other false pretences must not be isolated and distinct transactions, but must have some connection with the offence for which he is being tried (R. v. Solomons (1909), 2 K. B., 980; R. v. Fisher (1910), 79 L. J., K. B., 187)—*e.g.*, to prove it was not a mistake (R. v. Ollis (1900), 2 Q. B., 758), or to prove a charge of swindling by a particular method (R. v. Wyatt (1904), 1 K. B., 188), or to prove one connected scheme of fraud (R. v. Rhodes (1899), 68 L. J., Q. B., 83).

A person who obtains any money or a valuable thing "by any fraud or unlawful device or ill practice" in playing at cards, dice, tables, or other game, *or* in betting thereon, *or* in wagering on any game, sport, pastime, or exercise, may be convicted of false pretences (Gaming Act 1845,

sec. 17). (See R. v. O'Connor (1881), 15 Cox, 3, where a watch was obtained by tossing with coins for a wager.)

If A goes into a restaurant and orders food, and after consuming it says he has no means of paying, A is not guilty of larceny, as the food was delivered to him under a contract of sale with intent to pass the ownership, nor of false pretences, as A made no false representation that some fact exists or existed, but A can be convicted of the misdemeanour of incurring a debt and obtaining credit by fraud, and is liable to 1 year's hard labour under sec. 13 of the Debtors Act 1869 (R. v. Jones (1898), 67 L. J., Q. B., 41).

A Common Law cheat is any unlawful and deceitful thing affecting the public by which one fraudulently gets the property of another—*e.g.*, selling by false weights or measures, false personation. But false personation of a naval seaman with intent to get money or effects from the Admiralty is punishable on indictment with 5 years' penal servitude, or summarily with 6 months' hard labour (28 & 29 Vict., c. 124) ; and false personation of a soldier, with intent to get pay or prize-money, is felony, exposing to penal servitude for life (2 & 3 Wm. IV., c. 53). The False Personation Act 1874 makes it felony, punishable with penal servitude for life, to falsely personate any person with intent to obtain property.

Receiving Stolen Property.

This is only a misdemeanour at Common Law. But receiving of any chattel, money, valuable security, or any other property whatsoever, is a statutory felony, punishable by 14 years' penal servitude if the theft* is a felony *either at Common Law or under the Larceny Act 1861*; and is a statutory misdemeanour punishable by 7 years if the theft* is made a misdemeanour by the Larceny Act 1861 ; and if the theft* is punishable summarily under the Larceny Act

* Stealing, taking, extorting, obtaining, embezzling, or otherwise disposing thereof.

1861 the receiving is punishable in the same way (24 & 25 Vict., c. 96, secs. 91, 95, 98). If a partner steals the goods of the firm (R. v. Smith (1870), 39 L. J., M. C., 112), or if a wife steals the goods of her husband when she deserts him or is living apart from him (R. v. Streeter (1900), 69 L. J., Q. B., 915), as these thefts are not felonies at Common Law or by the Larceny Act 1861 but by other statutes, the receiver is only guilty of a Common Law misdemeanour. If a man is indicted for unlawfully receiving certain goods, and it is proved the theft was a felony at Common Law or under the Larceny Act 1861, he is not entitled to be acquitted because the indictment does not contain the word "feloniously," as the Common Law misdemeanour still exists, and under sec. 12 of the Criminal Procedure Act 1851 a person indicted for misdemeanour may be convicted thereof, although the evidence shows he committed a felony (R. v. Garland (1910), 1 K. B., 154). An indictment might state: "That A B on the day of one diamond pin of the goods and chattels of C D, before then feloniously stolen, taken and carried away, feloniously did receive and have, he the said A B at the time when he so received the said diamond pin as aforesaid then well knowing the same to have been feloniously stolen, taken and carried away."

To get a conviction it must be proved (1) that the property was stolen, (2) that it came into the actual possession of the accused, and (3) that *at the time he received it* he knew of the theft. The guilty knowledge is proved, either by direct evidence of the thief, or circumstantially—*e.g.*, by a denial of possession, *or* by proving that accused bought the goods at a price much under their value, *or* under sec. 19 of the Prevention of Crimes Act 1871, either (*a*) by proving that other goods stolen within 12 months were found in the accused's possession at the same time as the present goods were found in his possession (R. v. Carter (1884), 53 L. J., M. C., 96), or (*b*) by proving

—after evidence that the stolen goods were found in his possession (which includes evidence that he had pawned the goods, R. v. Rowland (1910), 79 L. J., K. B., 327)—a previous conviction of the alleged receiver within the preceding 5 years for fraud or dishonesty, but 7 days' notice in writing must be given to the accused of the intention to prove such previous conviction. If A receives in England goods stolen in any part of the United Kingdom (Larceny Act 1861, sec. 114), or if A receives in England goods stolen abroad (Larceny Act 1896), he can be indicted and punished in England.

Recent Possession.—If a person is found in possession of goods which have recently been stolen, and he is unable or declines to give any reasonable and probable account of how he came by them, there is a presumption (varying in strength with the circumstances) that he acquired them dishonestly, upon which the jury may find him guilty of larceny (R. v. Partridge (1836), 7 C. &. P., 551) or of receiving stolen goods (R. v. Langmead (1864), 9 Cox, 464).

Burglary.

Burglary consists, at Common Law, in breaking and entering the dwelling-house of another in the night with intent to commit a felony. But it is extended by the Larceny Act 1861, sec. 5, so as to include anyone who

(*a*) shall enter the dwelling-house of another with intent to commit any felony therein, or

(*b*) being in such dwelling-house, shall commit a felony therein;

and, in either case, break out of such dwelling-house in the night. The important points are (1) time, (2) place, (3) manner, and (4) intent. Burglary must take place between 9 p.m. and 6 a.m. (sec. 1)*; in the dwelling-house of another; the breaking must be of some part of the

* This is Greenwich mean time for Great Britain, and Dublin mean time for Ireland (43 & 44 Vict., c. 9, sec. 1).

house, *e.g.*, an outer or an inner door or window; and may be constructive, *e.g.*, the gaining admission under the pretext of taking lodgings; and the slightest entry (*e.g.*, putting in a finger or a hooked stick) is sufficient. The dwelling-house must be a permanent building and not a tent or caravan; the occupant must be in the habit of sleeping there; it need not be occupied at the time, *e.g.*, the tenant may have locked it up and gone to the seaside for a month. The breaking may be by unlocking the outer door, lifting a closed window, getting down the chimney, or lifting a cellar-flap kept closed merely by its own weight; but to enter by an open window is not a breaking, even though the window is only partly open and has to be opened wider. But if entry is made by an open window or door, and afterwards an inner door is broken or unlocked to enter a room, this is a breaking. A building which communicates with the dwelling-house by a door, or by an enclosed and covered passage, is part of the dwelling-house. The crime is always a felony, and punished by penal servitude up to life. Simple cases of burglary can be tried at quarter sessions since the Burglary Act 1896. The indictment for burglary states: "That A B on the day of , at about the hour of o'clock in the night [or morning] of the said day the dwelling-house of C D situate in the parish of and county of , feloniously and burglariously did break and enter with intent the goods and chattels of the said C D in the said dwelling-house then being feloniously to take, steal and carry away, and then in the said dwelling-house [enumerate the articles stolen] of the goods and chattels of the said C D in the said dwelling-house then being feloniously did steal, take and carry away."

Housebreaking.

This is a felony similar to burglary—except that (1) it is committed in a dwelling-house, by day only; and (2) it

may take place by day or night, in a school-house, shop, warehouse, counting-house, or in any building in the court-yard of a dwelling-house but not connected therewith by a direct communication or covered passage (Larceny Act 1861, secs. 56, 53). It is punished (*a*) by 14 years' penal servitude, if the projected felony is committed; (*b*) otherwise, by 7 years only.

Larceny in a Dwelling-house.

This takes place where there is no breaking, or no entry with intent to commit a felony. It is punishable by 14 years' penal servitude, if (*a*) the thing stolen is worth £5, or (*b*) the theft is accomplished through bodily fear. In other cases it is punishable as simple larceny.

Sacrilege.

Sacrilege is committing a felony in any church, chapel, meeting-house, or other place of divine worship, accompanied by breaking into or out of such place at any time. It is felony punishable by penal servitude for life; and the attempt is punishable with 7 years. (Larceny Act 1861, secs. 50, 57).

Miscellaneous.

To commit a felony in any building within the curtilage of a dwelling-house, but not internally communicating therewith, accompanied by breaking into or out of such building at any time, is felony, 14 years' penal servitude. (Larceny Act 1861, sec. 55).

To enter a dwelling-house in the night with intent to commit any felony therein is felony, 7 years (*Ibid.*, sec. 54).

To be found by night—armed with intent to break into any building to commit felony, *or* with housebreaking tools, *or* disguised with intent to commit felony, *or* in any building with intent to commit felony—is a misdemeanour, 5 years; and after previous conviction for such misdemeanour or for any felony, 10 years (*Ibid.*, secs. 58, 59).

Malicious Injuries to Property.

These are mainly covered by the 78 sections of 24 & 25 Vict., c. 97, the Malicious Damage Act 1861. Unlawful and malicious injury means injury done intentionally (voluntarily) without just excuse, and actual malice against the owner of the property is never necessary (sec. 58; Roper v. Knott (1898), 78 L. T., 594; *ante*, page 17). But it is a good defence that the accused acted in the *bonâ fide* exercise of a supposed right, and did no more harm than was reasonably necessary to assert that right (R. v. Clemens (1898), 67 L. J., Q. B., 482).

Arson, at Common Law, consisted in the wilful and malicious setting fire to a dwelling-house or out-house, and was punished with death. The crime is a felony, and is now regulated by the Malicious Damage Act 1861. Under this Act, unlawfully and maliciously to set fire—(1) to any dwelling-house, any person being therein; (2) to a place of divine worship; (3) to any house, stable, coachhouse, office, shop, mill, shed, or a building used for trade or manufacture or farming, with intent to injure or defraud any person; (4) to any railway, port, dock, harbour or canal building; (5) to any public building; (6) to stacks; (7) to mines; and (8) to ships—is punishable by penal servitude for life. Arson to any other building (*e.g.*, an unfinished dwelling-house), or to growing crops, is punishable by 14 years' penal servitude. Arson to Government vessels, dockyards, arsenals, or military or naval stores, is still punishable with death under the Dockyards Protection Act 1772. To fire anything in, against, or under a building, or to attempt to fire a building, is a felony punishable by 14 years, provided it would be a felony if the building were thereby set on fire. It is not a felony under this Act if a man maliciously sets fire to goods inside a house and thereby accidentally and unintentionally burns the house (R. v. Child (1871), 1 C. C. R., 307). But if a picture is cut out of its frame

and stolen, *and* the house is wilfully set on fire to conceal the theft, or the frame is set on fire with the knowledge that in all probability the house will get on fire, and with reckless indifference whether it does so, and the house catches fire—this is arson (R. v. Harris (1882), 15 Cox, 75; R. v. Nattrass, *Ibid.*, 73).

Explosions.—Causing an explosion which damages a dwelling-house when any person is therein, or which damages any building whereby the life of any person is endangered, is a felony punishable with penal servitude for life; and putting explosives near a building with intent to damage it or goods, is punishable with 14 years (Malicious Damage Act 1861, secs. 9, 10). By the Explosive Substances Act 1883, causing an explosion likely to endanger life or property is felony punishable with penal servitude for life; attempting to cause such an explosion, or making or having any explosive with that object, is felony punishable with 20 years' penal servitude; and making or having an explosive under suspicious circumstances is punishable with 14 years' penal servitude; but in each case under this Act the Attorney General must sanction the prosecution.

Rioters who demolish a building are guilty of felony, penal servitude for life; and if they damage a building, commit a misdemeanour, 7 years (Malicious Damage Act 1861, secs 11, 12).

A tenant who unlawfully and maliciously demolishes any part of the building or severs a fixture, commits a misdemeanour (*Ibid.*, sec. 13).

Destroying, or damaging with intent to destroy, certain goods (*e.g.*, silk, cotton, alpaca, lace) in process of manufacture, or the machinery for making the same, is felony, penal servitude for life; and destroying, or damaging with intent to destroy, agricultural or manufacturing or mining machinery is felony, 7 years' penal servitude (*Ibid.* secs. 14, 15, 29).

To put anything on a railway, or to remove or displace a rail or sleeper, or to alter points or signals—with intent to obstruct or injure any engine or carriage using the railway (Malicious Damage Act 1861, sec. 35), or with intent to endanger passengers (Offences Against the Person Act 1861, sec. 32)—is felony, penal servitude for life. And by any unlawful act or any wilful omission or neglect, to obstruct any railway engine or carriage (24 & 25 Vict., c. 97, secs. 35, 36), or to endanger the safety of passengers (24 & 25 Vict., c. 100, sec. 34)—is misdemeanour, 2 years. To throw anything at a railway train with intent to endanger persons therein is felony, life (24 & 25 Vict. c. 100, sec. 33).

Destroying or damaging a tree or shrub—(*a*) beyond the value of £1 in grounds adjoining a dwelling, or (*b*) beyond £5 elsewhere—is felony, 5 years' penal servitude (Malicious Damage Act 1861, sec. 21). Destroying or damaging any tree or shrub anywhere to the value of 1s. at least, exposes to 3 months or £5 fine on summary conviction, and a second offence exposes to 12 months' hard labour, and a third offence is a misdemeanour, 2 years (*Ibid.*, sec. 22).

Destroying or damaging plants in a garden, etc., is punishable summarily by 6 months or £20 beyond the damage; and a second offence is felony, 3 years (sec. 23). Destroying or damaging any cultivated root or plant used for food, medicine, distilling, dyeing, or any manufacturing purpose, and growing in open or enclosed ground, is punishable summarily by 1 month or 20s. fine, and for a second offence, 6 months (sec. 24).

Damaging a fence, wall, stile, or gate is punishable, the first time by £5 fine beyond the value, and a second time by 12 months' hard labour (sec. 25).

To kill, maim, or wound any cattle is a felony, 14 years (sec. 40). To kill, maim, or wound any dog, bird, beast or other animal (not being cattle, but being the subject of larceny at Common Law or ordinarily kept in confinement

or for a domestic purpose) is punishable summarily with 6 months or £20 beyond the damage, and on a second conviction with 12 months (sec. 41).

To cruelly beat, illtreat, overdrive, abuse or torture, any domestic animal, *or* to convey a domestic animal so as to subject it to unnecessary pain or suffering, *or* to fight or bait any kind of wild or domestic animal—is punishable summarily by £5 fine or 3 months. Using a dog on a public highway to draw any vehicle exposes to £2 fine, and a second time to £5 fine. (Cruelty to Animals Acts 1849 and 1854.) Cruelty to any bird, beast, fish, or reptile, which is in captivity but is not a domestic animal, is punishable by £5 or 3 months under the Wild Animals in Captivity Protection Act 1900. Vivisection without a licence from a Secretary of State is punishable summarily by £50 fine, but the accused can elect to be tried on indictment. (Cruelty to Animals Act 1876.)

Damage or injury to any kind of property not otherwise specially provided for is punishable—(*a*) if the damage is over £5, with 2 years' hard labour, and if done between 9 p.m. and 6 a.m. with 5 years' penal servitude (24 & 25 Vict., c. 97, sec. 51); (*b*) if not over £5, on summary conviction, with 2 months' hard labour or £5 fine and compensation up to £5 (sec. 52), but this sec. 52 does not extend to any case of fair and reasonable supposition of right, nor to any trespass (not being wilful and malicious) in hunting, fishing, or pursuit of game. Under sec. 51 the damage must be unlawful and malicious, while under sec. 52 it must be wilful or malicious. The effect appears to be the same.

Threats.

(*a*) A person who, knowing its contents, sends or delivers a *letter* or writing *threatening* to burn or destroy a house, barn or other building, or agricultural produce in any building, or any ship, or to kill, maim, or wound cattle

(24 & 25 Vict., c. 97, sec. 50), or to murder any person (24 & 25 Vict., c. 100, sec. 16), is guilty of felony, and liable to 10 years' penal servitude.

(*b*) A person who, knowing the contents, sends or delivers a letter or writing *demanding with menaces* and without reasonable cause, any chattel, money or other property, commits felony, and is liable to penal servitude for life. If the demand is with menaces (or by force) but otherwise than by letter, the punishment is penal servitude for 5 years (Larceny Act 1861, secs. 44, 45). *Menaces* include threats of injury to the person or property of the prosecutor, and threats to accuse him of misconduct not amounting to crime (R. v. Tomlinson (1895), 64 L. J., M. C., 97). It is for the jury to decide if menaces were in fact used.

(*c*) A person who, *with intent to extort*, sends a letter or writing, knowing that it contains accusations or threats to accuse any person of a crime punishable by death or penal servitude for not less than 7 years, or of assault with intent to commit rape, or of attempted rape, or an unnatural crime, or makes such a threat otherwise than by letter, is guilty of felony, and punishable by penal servitude up to life (Larceny Act 1861, secs. 46, 47). And the guilt or innocence of the person threatened is immaterial (R. v. Cracknell (1866), 10 Cox, 408), if the prisoner intended by the threat to extort money; but is material in considering whether the prisoner intended to extort money or merely to compound a felony (R. v. Richards (1868), 11 Cox, 43).

(*d*) To induce any person by violence or threats to execute a valuable security—*e.g.*, a deed—with intent to defraud, is felony, punishable by penal servitude for life (*Ibid.*, secs. 48, 49).

(*e*) Publishing, or threatening to publish, or proposing to prevent the publication of, a libel, in order to extort money, etc., is a misdemeanour punishable by 3 years' imprisonment (Libel Act 1843, sec. 3).

(*f*) Stealing in a dwelling-house any chattel, money, or valuable security, by menaces or threats, inducing bodily fear, is felony, punishable by 14 years' penal servitude (Larceny Act 1861, sec. 61).

Forgery.

Forgery is the false making or alteration of any written or printed instrument which appears on its face to be good and valid, with intent to defraud (R. v. Riley (1896), 1 Q. B., 309).

The forgery must be of some document. Thus to sign a painting with the name of an artist who did not paint it, is not forgery (R. v. Closs (1858), D. & B., 460); but it is a Common Law cheat if the picture is sold as genuine (*Ibid.*), and it also would amount to false pretences, or it may be punished on summary conviction under the Fine Art Copyright Act 1862, sec. 7, by forfeiture of £10, or of double the price at which the picture was sold, to the person aggrieved, who must however have been alive within 20 years.

The forgery may be of the whole instrument or of any material part of it. Thus, it is forgery to put a false date into a genuine deed in order to give priority over other deeds (R. v. Ritson (1870), 39 L. J., M. C., 10); or to alter a figure in a banknote, *e.g.*, £20 into £50 (R. v. Dawson (1717), 1 Stra., 19); or fraudulently to put a false signature to a genuine document, or a true signature to a false document, or to fill up a blank cheque for a larger sum than authorized (R. v. Bateman (1845), 1 Cox, 186); or to add to the name of one party the address of a different person of the same name, *e.g.*, to draw a bill on A B (of Leeds) and after acceptance to put the Halifax address of another A B under the drawee's name (R. v. Blenkinsop (1847), 2 C. & K., 531).

It is forgery to sign without authority in the name of an existing person or of a fictitious person (R. v. Lewis

(1754), Foster, 116) fraudulently (R. v. Boutien (1813), R. & R., 260). But it is no forgery to sign a name which you assume as your own, *e.g.*, for Richard X to buy goods and pay for them with a cheque on a bank where he has no account, and which he signs as William X and utters as his own, is false pretences but not forgery (R. v. Martin (1880), 49 L. J., M. C., 11).

Forging a servant's character or giving a false character in writing is punishable, under the Servants Character Act 1792, summarily with £20 fine or 3 months' hard labour; and by the same Act, a false character given orally or by conduct is punishable in the same way (R. v. Costello (1910), 79 L. J., M. C., 90).

Forgery is only a misdemeanour at Common Law. Examples of Common Law forgeries are:—of a railway pass (R. v. Boult (1848), 2 C. & K., 604), of a certificate of ordination (R. v. Etheridge (1901), 19 Cox, 676), of a testimonial to get some appointment (R. v. Sharman (1853), 6 Cox, 312), and a share certificate. But most cases are now dealt with by statute, and are felonies punishable (usually) by penal servitude for life. If any person "offers, utters, disposes of, or puts off" any instrument which he knows to be forged, he is punishable in the same way as for forging it; and an indictment for forgery usually charges the accused with uttering as well as forging. A tender or attempt to pass off the instrument is a sufficient uttering. The 53 sections of the Forgery Act 1861 contain the bulk of the statute law.

The Merchandise Marks Act 1887 makes it a misdemeanour

(*a*) for any person—unless he can prove he acted without intent to defraud—to forge a trade mark *or* falsely apply a trade mark, *or* apply a false trade description to goods, *or* make or possess an instrument for so doing; *or*

(*b*) for any person—unless the accused can show he took all reasonable precautions, and gave full information on demand, or acted innocently—to sell, or expose or have for sale, goods bearing a forged trade mark or false trade description.

Trade description means any description or statement as to the number, quantity, measure, or weight of any goods, or as to the place of production (Sheffield razors, English lever watch), or as to the mode of manufacture (hand-cut tobacco), or as to the material of which made, or as to an existing patent or copyright; and includes a description in a bill or invoice (Coppen v. Moore (1898), 2 Q. B., 300), and a customs entry of imported goods. The punishment is (*a*) on indictment 2 years' hard labour and a fine; (*b*) on summary conviction, 4 months' imprisonment or £20 fine, and if convicted a second time, 6 months or £50. The accused can elect in which way he will be tried, and can appeal to quarter sessions. The prosecution must be within three years after the offence or one year after its discovery—whichever expires first.

4.—Other Offences.

Treason is committed by the execution or contrivance of acts of violence against the person of the sovereign *de facto* (2 Henry VII., c. 1), or against the internal government of the realm, or of acts of treachery against the realm in favour of a foreign enemy. By the Treason Act 1351 it is treason—(1) to compass or imagine the death of the king or queen or their eldest son and heir; (2) to violate the king's wife, or his eldest daughter unmarried, or the wife of his eldest son and heir; (3) to levy war against the king in his realm; (4) to be adherent to the king's enemies in the realm, giving them aid in the realm or elsewhere; (5) to slay the chancellor or treasurer or the king's judges whilst

doing their offices. Endeavouring to prevent the person entitled to the Crown under the Act of Settlement from succeeding to it, is treason by 1 Anne, st. 2, c. 21. Also by the Succession to the Crown Act 1707, it is treason to maliciously, advisedly, and directly, by writing or printing, maintain and affirm that any person has any right or title to the Crown except under the Act of Settlement, or to maintain that Parliament cannot alter the descent of the Crown. Also by the Treason Acts 1796 and 1817, compassing, imagining, or intending death or destruction or maiming or wounding or imprisonment or restraint of the person of the sovereign, is treason. Compassing or imagining the death of the sovereign includes everything wilfully done or attempted, whereby his life may be endangered, *e.g.*, killing the sovereign, or going armed for that purpose, or providing poison or other means for that purpose, or conspiring for that purpose, or for deposing him, or for imprisoning him, or publishing a writing or deliberate speech which incites or advises persons to kill the king. Evidence of intent to depose the sovereign has been held evidence of "imagining his death" (Horne Tooke and Hardy's Case, 1794); so has an *unpublished* sermon which libelled the Government (Peacham's Case, 1615). Levying war consists of an insurrection, accompanied by force, for a general object (R. v. Frost (1839), 4 St. Tr. (N. S.), 85); the number of persons may be three or four, just as much as 1,000 (3 Inst., 9); it may be direct, *i.e.*, open rebellion, or constructive, *e.g.*, burning *some* dissenting chapels with intent to burn all (Case of Damaree and Purchase, 1710), or for a mob to assemble with intent by force to compel the repeal of a law or to alter the established religion (Gordon Riots Case, 1780). If a mob attack a prison to liberate a friend, or destroy a particular house, this is not treason, for there is no general object (R. v. Frost (1839), 9 C. & P., 129). If a British subject continues to reside in a foreign country after war breaks out, this is not

treason unless he actually aids or conspires with the enemy (1 Hale, 165); but if he voluntarily swears allegiance and becomes naturalized and fights for the enemy, it is treason (R. v. Lynch (1903), 1 K. B., 444). Treason is a felony, and punished by death (hanging, for which beheading can be substituted by sign manual warrant, Treason Act 1814), and the execution must still be public. There must be some overt act; the treason must be proved by two witnesses, unless there is a free confession; and the prosecution must take place within three years of the offence committed, except where the crime was a designed assassination of the sovereign. The prisoner is entitled to receive, ten days before the trial, a copy of the indictment, a list of the witnesses against him, and a list of the petty jury (Treason Act 1708, sec. 14; Juries Act 1825, sec. 21); except in treason against the person of the sovereign, for which the prisoner is tried as in murder (Treason Acts 1800 and 1842). He may peremptorily challenge 35 jurors, and be defended by two counsel (Treason Act 1695, sec. 1), and also address the jury.

Treason felonies are treasons which are *alternatively* declared felonies by the Treason Felony Act 1848. They consist of *compassing*

(*a*) to depose the sovereign, or

(*b*) to levy war against him within the United Kingdom to intimidate him or Parliament, or

(*c*) to incite foreigners to invade the realm with force.

The punishment is penal servitude for life. (See R. v. Gallagher (1883), 15 Cox, 291.)

Attempts to injure or alarm the sovereign are misdemeanours, punishable with 7 years, under the Treason Act 1842, sec. 2.

Sedition.

Sedition consists of writings or words or acts which fall short of treason, and yet have a clear tendency to produce public mischief by rousing general discontent

against the Crown, the government, or administration of justice, or ill-feeling between class and class. It is a misdemeanour, punishable with fine or imprisonment.

Foreign Enlistment Act 1870.

This Act makes it a misdemeanour, punishable with fine or 2 years' imprisonment, or both,

(1) if a British subject—during hostilities between foreign States which are at peace with England, and after England has published a proclamation of neutrality in the *London Gazette*—enlists (or induces others to enlist) in the service of either belligerent, or quits British territory (or induces others to do so) for that purpose, or builds, equips or dispatches, or arms, a ship for the use of either belligerent; or,

(2) if any person, within British dominions, prepares or fits out, or in any capacity assists in, a naval or military expedition against a State at peace with England.

Under head (2), any act of preparation of the expedition in British territory (*e.g.*, buying guns) is sufficient (R. v. Sandoval (1887), 56 L. T., 526); and where the expedition is prepared in British territory unlawfully, a British subject who assists outside such territory can be convicted (R. v. Jameson (1896), 2 Q. B., 425).

Under head (1), if a British subject has a pending contract for building or equipping a ship with one of the friendly States when war breaks out, and forthwith gives full information to the Home Secretary and security not to dispatch the ship until the war is over, he is not punishable under this Act.

The offender can be tried in any place where the offence was wholly or partly committed, or in any place in British dominions where he is; but a judge can order his removal for trial to any other place in British dominions.

Conspiracy.

Conspiracy is a combination of two or more persons to do an unlawful act (R. v. Orman (1880), 14 Cox, 381), whether that act be the final object of the combination, or only a means to the final end, and whether that act be a crime, or an act hurtful to the public, a class of persons, or an individual (R. v. Vincent (1840), 3 St. Tr., 1038). Thus it is conspiracy—if there is an agreement between two or more to commit a crime; *or* to attain a lawful act by criminal or illegal means (*e.g.*, to break into another man's house to obtain one's own goods); *or* falsely to accuse another of a crime; *or* to prevent justice; *or* wrongfully to injure an individual, a body of men, or the public in any way, even although if the injury were inflicted by a single person it would be a tort only and not a crime (R. v. Parnell (1881), 14 Cox, 508). No overt act in furtherance of the conspiracy need be proved, as the bare agreement constitutes the crime (O'Connell v. R. (1844), 11 C. & F., 155). After *primâ facie* proof of conspiracy is given, the acts and words and writings of each conspirator in carrying out the common object are evidence against all; but a letter from one to a third party recounting what he has done is only evidence against the writer (R. v. Hardy (1794), 24 St. Tr., 451). A combination in the course of trade competition is not conspiracy, though it causes loss to other traders (Mogul Steamship Co. v. McGregor (1892), 61 L. J., Q. B., 295); neither is a combination to do or procure any act in contemplation or furtherance of a trade dispute, unless the act is a crime if done by one person only (Trade Disputes Act 1906, sec. 3). Conspiracy is a misdemeanour, and is punished (except in the case of murder, see page 33) by fine or imprisonment or both. If two only are indicted for conspiring together, both must be acquitted or both convicted (R. v. Manning (1883), 12 Q. B. D., 241); and if three are indicted and one pleads Guilty and is sentenced but the other two plead Not guilty

and are acquitted, the judgment against the one who pleaded Guilty must be set aside (R. v. Plummer (1902), 2 K. B., 339). Husband and wife cannot be convicted for conspiring with each other. But one person can be indicted for conspiring with others who are dead or unknown or have not been caught (R. v. Kinnersley (1719), 1 Str., 193). If a felony is committed under a conspiracy, the culprits may be tried either for the felony or for the conspiracy, but not for both (R. v. Button (1848), 11 Q. B., 929; Criminal Procedure Act 1851, sec. 12).

An unlawful assembly is where three persons at least meet together to break the peace, *or* do break the peace, *or* meet under such circumstances (either from the time of meeting, the number, or the weapons they carry) as, according to the opinion of rational and firm men, are likely to endanger the peace, though no unlawful or aggressive act is done (R. v. Vincent (1839), 9 C. & P., 91). A lawful assembly is not made unlawful simply because those who take part in it know beforehand of organized opposition to it which will probably cause a breach of the peace (Beatty v. Gillbanks (1882), 51 L. J., M. C., 117). But if the object of a meeting is unlawful, or if there is something unlawful in the conduct of those who call or address the meeting, *and* the illegality would naturally excite opponents to a breach of the peace (Wise v. Dunning (1902), 1 K. B., 167); or if the peace can only be preserved by dispersing a lawful meeting, and it refuses to disperse (O'Kelly v. Harvey (1882), 15 Cox, 435)—in either case, the meeting may thus become an unlawful assembly. A political meeting of more than 50 persons within a mile from Westminster Hall, when Parliament or the Supreme Court is sitting, to consider or prefer a petition to King or Parliament for alteration of matters in Church or State, is an unlawful assembly (Seditious Meetings Act 1817). *A rout* is where three persons at least meet together to do some unlawful act upon a common

quarrel, *e.g.*, to forcibly pull down fences erected on a common or over a right of way, and proceed to do the act. *A riot* is where three persons at least meet of their own authority to assist each other in some private enterprise (lawful or unlawful), and actually carry out their object in a violent and tumultuous manner. If six tenants meet at an inn and agree to beat an estate agent, they form an unlawful assembly; if they proceed from the inn in search of the agent, they form a rout; if they find the agent and beat him, they become a riot. All three offences are misdemeanours punishable by fine or imprisonment. By the Malicious Damage Act 1861, sec. 11, it is felony (punishable with penal servitude for life) for three or more persons to riotously assemble and destroy or begin to destroy a church, chapel, house, building used in farming or trade or manufacture, or machinery; and it is a misdemeanour (7 years) if they forcibly damage the same (sec. 12). The *Riot Act* (1 Geo. I., st. 2, c. 5) makes it felony punishable by penal servitude for life—(1) if twelve persons unlawfully assembled, and commanded by a local justice or sheriff or mayor, reading the official proclamation in the Act, to peaceably disperse, remain unlawfully assembled for one hour afterwards, or (2) if the reading of the proclamation is opposed; but the prosecution must be within 12 months of the crime. Seamen who riotously obstruct the loading, or unloading, or sailing, of a ship, are liable to hard labour for not less than 6 or more than 12 months (Shipping Offences Act 1793).

Perjury.

Perjury is a misdemeanour punishable by penal servitude for 7 years (Perjury Act 1728, sec. 2). It occurs where a lawful oath is duly administered, in a judicial proceeding pending before some competent tribunal, to a person who swears (or affirms under the Oaths Act 1888) wilfully, absolutely and falsely, on a matter material to the issue or

cause in question (R. v. Aylett (1785), 1 T. R., 69; 3 Inst., 164). Where a witness is duly sworn before a competent authority, but gives the false evidence in the absence of such authority (*e.g.*, where a debtor came up for public examination in bankruptcy and was duly sworn by the registrar, but the examination was conducted in the absence of the registrar), no perjury is committed (R. v. Lloyd (1887), 56 L. J., M. C., 199). The Evidence Act 1851 enacts that every court, judge, justice, officer, commissioner, arbitrator or other person, now or hereafter, having by law or by consent of parties, authority to hear, receive and examine evidence, has power to administer an oath to witnesses legally called (sec. 16). And a false oath before a commissioner for oaths is perjury where it would be so if the oath had been taken before a court (Commissioners for Oaths Act 1889, sec. 7). Any fact is material if it is in issue or tends to prove or disprove any fact in issue, *e.g.*, any question in cross-examination is material if it goes to the credit of the witness (R. v. Baker (1895), 64 L. J., M. C., 177). It is perjury to swear to a fact which the witness knows is not true, or of which it can be proved he was entirely ignorant, or which it can be proved he believed not to be true; but it is not perjury if he swears to what is false in the honest belief it is true (Stephen's Digest, Art. 148).

The Perjury Bill now (1910) before Parliament is a consolidating and simplifying measure. It proposes to declare that if any person lawfully sworn as a witness in a judicial proceeding wilfully makes a statement in that proceeding which he knows to be false or does not believe to be true, he shall be guilty of perjury.

An indictment for perjury need not set out the details of the proceeding in which the oath was taken, or the authority of the court; but it is sufficient to set out the substance of the offence and the court (Criminal Procedure Act 1851, sec. 20). The alleged false evidence must be specifically set out and specifically contradicted in the indictment. The

proceeding in which the false evidence was given must be proved, by production—if it was a civil case, of the record or of an examined or certified copy thereof under the Evidence Act 1851, sec. 14, or if it was a criminal case, of a certificate of the indictment and trial under the Criminal Procedure Act 1851, sec. 22. The evidence given by the accused at the former trial must be proved by some one who was present. Lastly, the falsity of such evidence must be proved by two witnesses, or by one witness with proof of material facts which confirm him, *e.g.*, a letter written by accused which contradicts his sworn evidence (R. v. Hook (1858), 8 Cox, 5).

Subornation of Perjury is punished like perjury, and is established on proof that A committed perjury and B procured him to do so.

False Swearing.—Where a person swears falsely before one having authority to administer an oath, so that the offence would have been perjury if the oath had been taken in a judicial proceeding, the offence is called *false swearing* (*e.g.*, making a false affirmation to procure a marriage licence), and is a Common Law misdemeanour. Giving false evidence before an arbitrator, and swearing a false affidavit under the Bills of Sale Acts 1878 and 1882, or before a commissioner for oaths, are statutory perjuries.

Compounding a felony is a Common Law misdemeanour. It consists in a promise not to prosecute in consideration of some reward, *e.g.*, A agrees not to prosecute B for theft if B will return the stolen goods (R. v. Burgess (1886), 16 Q. B. D., 141); and may be committed by any person who knows of the felony (*Ibid.*). A misdemeanour which can form the subject of a civil action (*e.g.*, common assault or libel) can be compounded (Keir v. Leeman (1846), 9 Q. B., 371); but not if it specially affects the public, *e.g.*, a public nuisance, and any agreement for that purpose is void both at law and in equity (Windhill Local Board v. Vint (1890), 63 L. T., 366). However there seems to be no precedent

for an indictment for compounding a misdemeanour, except where it is compounding an information on a penal statute without leave of the court under 13 Eliz., c. 5, or under a conspiracy to obstruct or defeat the course of justice, or interfering with witnesses (Archbold, ~~1089~~). To corruptly take a reward for aiding in the recovery of a stolen dog is punishable with 18 months' hard labour (Larceny Act 1861, sec. 20). To corruptly take a reward for helping any person to the recovery of any property which has been stolen, extorted, embezzled, or converted, is felony punishable with 7 years' penal servitude, and for a male under 18 whipping (Larceny Act 1861, sec. 101). Any public advertisement, offering a reward for the return of lost or stolen property and stating that no questions will be asked, renders advertiser, printer, and publisher liable to pay £50 each to any person who sues for it by an action of debt (Larceny Act 1861, sec. 102); but the printer and publisher of a newspaper can only be sued within six months, and with the Attorney General's leave (Larceny Act 1870, sec. 3). For example of such an action, see Mirams v. Our Dogs Publishing Co. (1901), 70 L. J., K. B., 879.

Public Nuisance.

A common nuisance is an offence against public order by the doing of an unlawful act, or the omitting to perform a legal duty, provided such act or omission endangers the life, health, property, morals, or comfort of the public, or obstructs the exercise of a public right. Examples are: emitting noxious fumes from chemical works, polluting streams, selling obscene books or prints, stopping or omitting to repair a public highway, ringing a peal of bells at unreasonable hours, causing a great smoke, disorderly inns, brothels, gaming house, lotteries. It is a criminal offence, provided it is really an annoyance to the public. It is no defence that the public came to the nuisance, or that the public derives more benefit than annoyance from it, or that it has

existed for a very long time (Archbold, 1184, 1185). The remedy is by indictment for misdemeanour, or abatement by a public body under some statute or by a private person who suffers special damage; but many nuisances can now be punished on summary conviction under some statute or bye-law. Criminal proceedings will lie for a common nuisance against the owner of property, if he is in occupation, or has participated in or sanctioned the nuisance; but the owner is not responsible for a nuisance simply because his tenant commits one.

The non-repair of a highway gives rise to an indictment for a public nuisance; and this is the only remedy if the obligation to repair is disputed. Under sec. 25 (2) of the Local Government Act 1894, if a person liable to repair *ratione tenure* fails to do so on request of the rural district council, such council may do the repairs and recover the amount from that person. If the highway authority neglects to repair, a county council can make an order on a district council to do the work, and if the order is disobeyed can do the work itself and recover the amount from the district council; or a complaint may be made to the Local Government Board, under sec. 299 of the Public Health Act 1875. Also the rural district council or other person or body chargeable with the repairs can be summoned before justices at special session for the highways and fined £5, and ordered to do the repairs under sec. 94 of the Highway Act 1835.

A lottery—*i.e.*, a distribution of prizes by lot or chance—is an offence under the Gaming Act 1802. Thus if a grocer sells packets of tea fairly worth the price paid, but announces that each packet contains a coupon entitling the buyer to a prize varying in value, as no buyer knows beforehand what he will get, the Attorney General may sue the grocer for £500, or he may be prosecuted as a rogue and vagabond (Taylor v. Smetton (1883), 52 L. J., M. C., 101). A limerick competition is a lottery (Blyth v. Hulton (1908), 72 J. P., 401).

So is a sweepstake on a horse race (R. v. Hobbs (1898), 2 Q. B., 647; Hardwick v. Lane (1904), 1 K. B., 204). But it is not a lottery for a newspaper to offer specified prizes to buyers who correctly place the first three horses in a race (Stoddart v. Sagar (1895), 73 L. T., 315), or to anyone who guesses the number of births and deaths in London during a given week (Hall v. Cox (1899), 79 L. T., 653)—for these are competitions of skill.

By the Falsification of Accounts Act 1875, a clerk, officer, servant, or person employed in that capacity who—wilfully and with intent to defraud—destroys, alters, mutilates, or falsifies any of his employer's books, writings, papers, valuable securities or accounts, or makes or concurs in making any false entry, omission, or alteration therein, commits a misdemeanour punishable with 7 years' penal servitude. The word "accounts" in this Act includes any mechanical contrivance for recording the amount of money received, *e.g.*, a taximeter (R. v. Solomons (1910), 79 L. J., K. B., 8). By the Larceny Act 1861, the offence and punishment are the same where the falsification is by a director, manager, public officer, or member, of a public company or corporation, with intent to defraud (sec. 83), *or* where such a person fraudulently publishes a false written statement to induce anybody to become a shareholder or to lend money to the concern (sec. 84). By the Companies Act 1908, sec. 216, if committed by a director, officer, or contributory of a company being wound up, the offence is a misdemeanour punishable by 2 years' imprisonment.

Bankruptcy Offences.

The Debtors Act 1869 makes it—

(1) A felony punishable with 2 years' imprisonment, to fraudulently abscond or attempt to abscond from England with £20 worth of property, after presentation of a bankruptcy petition, or within four months before (sec. 12); and

(2) A misdemeanour punishable with 2 years, fraudulently to abstain from making discovery of property to the trustee, *or* to neglect to give up property, books, or papers, *or* to let false debts be proved, *or* (within four months before presentation of a bankruptcy petition by or against him) to conceal or remove £10 worth of property, etc. (sec. 11).

The Bankruptcy Act 1883 makes it a misdemeanour (1 year) for an undischarged bankrupt to obtain credit to the extent of £20 without disclosing that he is an undischarged bankrupt. Intent to defraud need not be proved (R. v. Dyson (1894), 2 Q. B., 176); and it is sufficient if credit is in fact obtained without being stipulated for (R. v. Peters (1886), 16 Q. B. D., 636), or if goods under £20 are ordered, and goods over £20 are sent and kept (R. v. Juby (1886), 55 L. T., 788).

The above offences under the Debtors Act and the Bankruptcy Act are triable at quarter sessions. If such an offence is reported to the Bankruptcy Court, it must order a prosecution if there is a reasonable probability of conviction; and the Director of Public Prosecutions has to prosecute.

Coinage Offences.

The principal offences relating to the coin of the realm are governed by the Coinage Act 1861 (24 & 25 Vict., c. 99). The maximum penalties are as follow:—

Counterfeiting gold or silver—felony—penal servitude for life.

Counterfeiting copper, or foreign gold or silver—felony—penal servitude for 7 years.

Counterfeiting foreign copper—misdemeanour—1 year; second offence, 7 years.

Colouring by any means any coin or piece of metal to make it pass for current gold or silver coin—felony—penal servitude for life.

Defacing current coin by stamping thereon any names or words—misdemeanour—imprisonment up to 1 year. Anyone tendering a defaced coin may (by leave of the Attorney General) be fined 40s. on summary conviction before two justices.

Impairing, diminishing or lightening current gold and silver—felony—14 years' penal servitude.

Knowingly uttering counterfeit gold or silver—misdemeanour—1 year. If the offender has another bad coin in his possession, or utters another within 10 days, 2 years. If after a previous conviction —felony—penal servitude for life.

Uttering counterfeit copper, or having in possession three counterfeit copper coins with intent to utter—misdemeanour—imprisonment up to 1 year.

If a coin tendered as current gold or silver coin to any person is suspected to be a bad one, such person may cut or bend or break it, and the loss falls on him if it is a good one, and otherwise on the party tendering it; and any dispute hereon is to be settled by a justice of the peace.

Having in possession three or more counterfeit gold or silver coins with intent to utter—misdemeanour—5 years' penal servitude; but if previously convicted —felony—life.

Having in possession more than five counterfeit foreign coins with intent to utter—a fine of from 10s. to 40s. for each (half to go to the informer), or imprisonment in default of payment on summary conviction.

Unlawful making, mending, buying, selling, or having possession of, tools for coining—current gold or silver or any foreign coin—felony—life; current copper coin—felony—7 years.

Unlawful making, or possessing, or selling anything

resembling current gold or silver coin—misdemeanour—1 year (Counterfeit Medals Act 1883).

Defrauding Railways.

To check frauds by railway passengers, sec. 5 of the Regulation of Railways Act 1889 enacts that a railway passenger may be detained by any officer of the company or any constable and fined 40s. on summary conviction—if he does not on demand by an officer or servant of the company (1) produce and (if required) give up his ticket, or (2) pay the fare from the place at which he joined the train, or (3) give his name and address. Also if he travels without having paid his fare and with intent to avoid payment, *or* if he gives a false name or address, he may be fined summarily 40s. and for a subsequent offence £20 or a month.

Trade Disputes.

Offences connected with strikes are provided for by the Conspiracy and Protection of Property Act 1875. This statute enacts that:—

(1) Any person who wrongfully and without legal authority (with a view to compel another person to do, or omit, some act* which he has a right to do) uses violence to, or intimidates† such person or his family or property, *or* persistently follows him about, *or* hides or interferes with his use of his tools, clothes or property,‡ *or* "pickets" him, *i.e.*, watches or besets any place where he happens to live or work or at any time be, unless (Trade Disputes Act 1906, sec. 2) it is done merely to

* The conviction must specify the particular act (Smith v. Moody (1903), 72 L. J., K. B., 43).

† There can be no intimidation without a threat of personal violence (Curran v. Treleaven (1891), 65 L. T., 573).

‡ The conviction must specify the particular property (Smith v. Moody, *supra*).

peaceably obtain or communicate information, or to peaceably persuade any person to work or abstain from working, *or* with two other persons follows him in a disorderly manner through the street;

(2) An employee who wilfully and maliciously breaks his contract of service, with the knowledge that the probable consequence will be to deprive the inhabitants of gas or water; and

(3) An employee who wilfully and maliciously breaks his contract of service, knowing that the probable consequence will be to endanger life or cause serious bodily harm or expose valuable property to destruction or serious injury—

is liable on summary conviction, or (at the prisoner's option) on indictment, to imprisonment up to 3 months or fine up to £20.

Escape is where a prisoner gets free by his own efforts, or those of others, but without force; *prison breach* is where a prisoner sets himself free by force; *rescue* is where a prisoner is liberated by others with force.

Embracery is any attempt to influence a jury corruptly to give a verdict in favour of one side by promises, persuasions, money, etc. It is a misdemeanour, and punishable—both at Common Law and by statute—with fine or imprisonment.

Vagrancy.

The Vagrancy Act 1824 (5 Geo. IV., c. 83) is the principal statute on this subject. It deals with vagrants under the heads of (1) idle and disorderly persons, (2) rogues and vagabonds, and (3) incorrigible rogues.

Idle and disorderly persons include able-bodied persons who or whose families become chargeable to the parish; persons who fraudulently obtain parish relief; a woman

neglecting to maintain her bastard child; persons who return to and become chargeable in a parish from which they have been removed by order of two justices; hawkers and pedlars wandering abroad and trading without licences; prostitutes behaving riotously or indecently in public places; beggars asking alms or causing or encouraging others to do so; and disobedient or insubordinate paupers. They may be sentenced by a petty sessional court to 1 month's imprisonment or £5 fine (*Ibid.*, sec. 3).

Rogues and vagabonds are idle and disorderly persons previously convicted as such; fortune-tellers; persons wandering abroad without visible means of subsistence, and not giving a good account of themselves; or wilfully exposing obscene prints in a public place; or publicly exposing their persons; or exposing wounds or deformities to obtain alms; or getting alms by false pretences; or running away and leaving wife or children chargeable to the parish; or playing or betting at games of chance in a public place; or possessing specified instruments with intent to commit felony; or found in a dwelling, etc., for an unlawful purpose; or reputed thieves frequenting (or loitering in, 54 & 55 Vict., c. 69, sec. 7) a public place with intent to commit felony; persons convicted as idle and disorderly persons resisting apprehension as such; discharged prisoners acting contrary to a certificate to receive relief on the way to their place of settlement; and, by the Vagrancy Act 1898, a male who knowingly lives on the earnings of prostitution or who persistently solicits for immoral purposes in a public place. They may be imprisoned for 3 months or fined £25, by two justices in a petty sessional court (*Ibid.*, secs. 4, 15).

Incorrigible rogues are persons confined under the Vagrancy Act who break out of prison; rogues and vagabonds previously convicted as such; and persons resisting apprehension as rogues and vagabonds if previously convicted as such. They may be sent to prison till the next

quarter sessions, and then imprisoned for 1 year, and, if males, whipped (*Ibid.*, secs. 5, 10).

Election Offences.

Offences at elections consist of "corrupt practices" and "illegal practices."

Corrupt practices include treating, undue influence, bribery, personation, and aiding or procuring personation. Treating is corruptly influencing a vote by meat or drink or entertainment. Undue influence is using or threatening force, injury, loss, or duress, to interfere with freedom of voting. Bribery is giving or offering any money or valuable consideration or employment, to influence a vote. Personation is voting twice at the same election, or applying for a ballot paper in the name of another person; it is a felony, 2 years' hard labour. The other three corrupt practices are misdemeanours punishable with imprisonment for a year or fine not exceeding £200. The person convicted of a corrupt practice is incapable for 7 years of being registered as an elector or holding any public or judicial office. A candidate found personally guilty of a corrupt practice becomes incapable of ever sitting or voting in the House of Commons for the constituency in respect of which the corrupt practice was done, and if he has been elected his election is void. A candidate found guilty of corrupt practices by his agents cannot be elected for that constituency for 7 years. A candidate or election agent who knowingly makes a false declaration as to election expenses is punishable as for perjury, and is also to be deemed guilty of a corrupt practice. (17 & 18 Vict., c. 102; 46 & 47 Vict., c. 51.)

Illegal practices include payments for promoting the election of a candidate on account of (*a*) conveyance of electors to the poll, (*b*) banners, cockades, or music, (*c*) exhibiting of advertisements by electors; or using licensed premises or elementary schools as committee rooms; or

circulating false statements about the character or conduct of a candidate, without reasonable excuse. The penalty is £100 fine, and incapacity for 5 years of being an elector in the place where the illegal practice was committed. (46 & 47 Vict., c. 51, sec. 7; 58 & 59 Vict., c. 40.)

Bribery and Corruption.

The Public Bodies Corrupt Practices Act 1889 enacts that any one who corruptly solicits or receives or gives or offers any advantage or reward of any kind, as an inducement to or on acount of any member, officer, or servant of a public body, doing or forbearing to do anything in respect of a matter in which such public body is interested, is guilty of misdemeanour punishable at quarter sessions with 2 years' imprisonment or £500 fine (or both) and forfeiture of any public office and incapacity to hold a public office for 7 years and surrender of the bribe to the public body. The Attorney General must sanction the prosecution.

The Prevention of Corruption Act 1906 enacts that it is a misdemeanour punishable—on indictment at assizes with 2 years' hard labour or £500 fine (or both), or on summary conviction with 4 months' hard labour or £50 fine (or both)—

(*a*) If any agent or servant or employé *corruptly* accepts or agrees to accept or attempts to obtain, for himself or any other person, any gift or consideration as an inducement or reward for doing or forbearing to do after the Act any act in relation to his principal's affairs or business, or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business; or

(*b*) If any person *corruptly* gives or agrees to give anything to an agent for so doing; or

(*c*) If any person *knowingly* gives to any agent, or if any agent *knowingly* uses with intent to deceive his

principal, any receipt, account, or document which is false in any material particular and which he knows is intended to mislead his principal.

But no prosecution can take place without leave of the Attorney General. A bribe given or promised to a shopman to induce him to sell his master's goods at less than the selling price, or the offer of a bribe to a policeman in the execution of his duty, would come under this Act.

Contempt of Court.

This is committed by any disobedience to the rules, order, process, or dignity of a court, which has power to punish such an offence, *i.e.*, a Court of Record. It may be committed either in or out of court; and it is either direct (*i.e.*, an open insult to or resistance of the powers of the court or the presiding judges) or circumstantial (*i.e.*, which, without gross insolence or direct opposition, plainly tends to create an universal disregard of the authority of the court). Thus a stipendiary magistrate may commit contempt of court by acting unjustly, oppressively, or irregularly in his administration, or disobeying the writ of a superior court, or proceeding in a matter after a writ of prohibition, *certiorari*, or *supersedeas*. A newspaper article calculated to interfere with the course of justice in any pending judicial proceeding is contempt of court (R. v. Parke (1903), 2 K. B., 432); it is also an indictable misdemeanour (R. v. Tibbits (1902), 1 K. B., 77).

Piracy.

Piracy is robbery on the high seas (Att. Gen. v. Kwokasing (1873), 5 P. C., 199). It is a felony punishable with penal servitude for life, or, if actual violence endangering life is used, with death. By statute, it is piracy (1) to board a merchant ship and throw overboard or destroy any goods thereon, or (2) for the master or any seaman to run away

with the ship or any of its belongings or cargo, or to voluntarily yield the same up to any pirate, or to combine to do these things, or to try to corrupt others to do them, or to try to make a revolt in the ship, or (3) to assist pirates in any way (Piracy Acts 1698, 1721, 1744, 1837). It can be tried at assizes or the Central Criminal Court.

Religion.

Some criminal offences in connection with religion deserve a short notice:—

(1) Blasphemy is licentious abuse of sacred things with intent to insult or pervert others, as distinguished from a temperate and honest denial of the tenets of Christianity (R. v. Ramsay (1883), 48 L. T., 733). It is a Common Law misdemeanour.

(2) A person educated in, or having made profession of, the Christian religion who (by writing, printing, teaching or advised speaking) maintains there are more gods than one, or denies the truth of Christianity or the divine authority of the bible, upon conviction on indictment, is disabled from holding any public office, and on second conviction is liable to 3 years' imprisonment and is disabled from bringing any civil action; but a prosecution for words spoken must be commenced within 9 days (9 Wm. III., c. 35).

(3) Wilfully and maliciously or contemptuously disturbing public worship is punishable at quarter sessions by fine of £40 under the Places of Religious Worship Act 1812.

(4) Brawling—*i.e.*, riotous, violent, or indecent behaviour at any time in a place registered for public worship, or churchyard, or burial ground—is punishable under the Brawling Act 1860 summarily with £5 fine or 2 months' imprisonment.

(5) Sacrilege—*i.e.*, committing a felony in a place of

divine worship, accompanied by breaking into or out of such place—is felony punishable with penal servitude for life; the attempt is punishable with 7 years (Larceny Act 1861).

(6) Profane cursing is punished, within 8 days, summarily by fine of 1s., 2s. or 5s., or 10 days' imprisonment (19 Geo. II., c. 21).

(7) The Sunday Observance Act 1677 (29 Car. II., c. 7) says that tradesmen, artificers, workmen, labourers, or others *ejusdem generis*, who exercise their ordinary calling on Sunday, are liable on summary conviction to 5s. fine, if prosecuted within 10 days, unless it is a work of necessity or charity; but no information can be laid without the previous consent of the chief of the local police or two justices or a stipendiary. This Act does not apply to farmers (R. v. Silvester (1864), 33 L. J., M. C., 79), or stage coach proprietors (Sandiman v. Breach (1827), 7 B. & C., 96), or barbers (Palmer v. Snow (1900), 1 Q. B., 725).

Adulteration.

The Sale of Food and Drugs Acts 1875 to 1907 are aimed against adulteration. "Food" includes every article used for food or drink by man (except drugs or water), and any article which ordinarily enters into or is used in the composition or preparation of human food, and flavouring matters and condiments (1899 Act, sec. 26). "Drug" includes medicine for internal or external use (1875 Act, sec. 2). By secs. 3, 4 and 5 of the 1875 Act—

(1) Mixing food (for sale) with anything which makes it injurious to health, or selling the same so mixed; or

(2) Mixing (for sale) any drug with anything which injuriously affects its quality, or selling the same so mixed—

is punishable with £50 fine or 3 months (and on a second conviction with 6 months), unless defendant proves his ignorance of such mixing, and reasonable diligence.

By secs. 6 and 9 of the 1875 Act—

(3) Selling to the prejudice of the purchaser, any food or drug which is not of the nature, substance, or quality of the article asked for; or

(4) Selling any compound article of food or compounded drug, composed of ingredients not in accordance with the demand of the buyer; or

(5) Abstracting anything from food so as to affect injuriously its nature, quality, or substance, with a view to selling such altered food without notice, or selling such altered food without disclosure; or

(6) Giving a false warranty in writing in respect of any food or drug sold, or wilfully applying a written warranty given for one article of food or drug to another, or wilfully giving a false label with any article of food or drug sold—

is punishable with £20 fine, and on second conviction £50, and on third conviction £100 (1899 Act, sec. 17).

If a customer asks for "milk" and is supplied with milk from which 60 per cent. of butter fat has been extracted, the seller cannot be convicted of offence (3), for he has supplied the article asked for: but he can be convicted of offence (5), *i.e.*, selling altered food without disclosure, and for this purpose it is not necessary to prove the seller knew of the alteration, as guilty knowledge of the seller is immaterial (Pain v. Boughtwood (1890), 24 Q. B. D., 553). If the defendant proves he bought the article sold with a written warranty, and sold it as purchased by him, he is to be acquitted; and for this purpose a general warranty is sufficient, provided it is connected with the particular consignment of goods by either verbal or written evidence (Elliot v. Pilcher (1901), 70 L. J., K. B., 795).

But such warranty is not available as a defence unless, within 7 days after he is served with the summons, defendant sends to the buyer a copy of the warranty, and also sends both to the buyer and to the warrantor a written notice that he relies on the warranty. If the warranty was given by a person resident out of the United Kingdom, defendant must also prove that he took reasonable steps to ascertain and believed in, the truth of the warranty. The warrantor may appear at the hearing and give evidence. An appeal lies to quarter sessions. All prosecutions must be commenced (*i.e.*, the information must be laid, Brooks v. Bagshaw (1904), 2 K. B., 798) within 28 days if the purchase was for test purposes (1899 Act, sec. 19), and in other cases within 6 months. In all cases, the summons must state particulars of the offence and the prosecutor's name, and must be served 14 clear days before the hearing, with a copy of any analyst's certificate (1899 Act, sec. 19).

Poaching.

By the Night Poaching Acts 1828 and 1844—by night (*i.e.*, from the end of one hour after sunset to the beginning of one hour before sunrise) to unlawfully take or destroy any game on any land or road or to enter on any land for that purpose with a gun or net or other instrument—is punishable with 3 months' hard labour, and a further 6 months in default of finding sureties to be of good behaviour for a year; the second offence entails 6 months; and a third offence is misdemeanour, 7 years' penal servitude. The owner or occupier of the land or his servant may arrest the poacher, who is liable to 7 years if he assaults or offers violence to them. It is a misdemeanour (14 years) for three or more by night to be on land for unlawfully taking game, if any of them is armed with any offensive weapon. Proceedings must be taken within 6 months for summary conviction or within 12 months by indictment (9 Geo. IV., c. 69).

By the Game Act 1831—trespass by day in pursuit of game is punishable summarily with £2 fine, or if five offenders with £5 each; any person who kills game on Sunday or Christmas Day, or uses a dog, gun, or net for that purpose on such a day, can be fined £5; and laying poison for game entails a £10 fine; the prosecutions under this Act must be commenced within 3 months.

Gaming.

Playing or betting in any public place *with any instrument* at any game of chance exposes to a fine of 40s., and after the first offence £5 (Vagrant Act 1873); *or* to 3 months as a rogue and vagabond under the Vagrancy Act 1824. An unreserved compartment in a railway carriage in transit is a public place, but an omnibus waiting its turn to go on the rank and begin a journey is not.

Anyone concerned in carrying on a common gaming house is liable on summary conviction to £100 fine or 6 months' hard labour under the Gaming Act 1845. Any person who habitually uses any place for unlawful gaming, or who assists in conducting the business, or advances money for such gaming, is liable on summary conviction to £500 fine or 12 months' hard labour under the Gaming Houses Act 1854. The players may be fined 6s. 8d. under 33 Henry VIII., c. 9. A place kept as a betting house or as a place for receiving deposits on bets is to be deemed a common gaming house (Betting Act 1853, sec. 2). A common gaming house means any place (not necessarily open to the public) in which a large number of persons are invited habitually to congregate for the purpose of staking money on some game; and it includes a house which is kept as an honest social club for those who do not desire to play as well as for the purpose of gaming (*e.g.*, baccarat) for those who wish to play. Unlawful games include—(1) those forbidden by name under a statutory penalty, viz.: ace of

hearts, faro, bassett, hazard, passage, and every game with dice (except backgammon) and roulet, and every game at cards which is not a game of mere skill, and possibly any other game of mere chance; and (2) games as to which a statute says the keeping of a house for playing them, and the playing at them therein by anybody, shall be illegal, *e.g.*, all games of chance (or chance and skill combined) at dice or cards (Jenks v. Turpin (1884), 50 L. T., 808).

Betting.

Betting is not a criminal offence at Common Law, nor is the calling of a bookmaker necessarily illegal (Thwaites v. Coulthwaite (1896), 1 Ch. D., 496).

By the Vagrant Act 1873 persons playing or betting in any public place (*e.g.*, a railway carriage in transit and not reserved, Langrish v. Archer (1882), 10 Q. B. D., 44) with any instrument at any game of chance are punishable on summary conviction with 40s. fine or as rogues and vagabonds; but this does not apply to mere betting (Ridgeway v. Farndale (1892), 2 Q. B., 309).

By the Metropolitan Streets Act 1867, sec. 22, in the City and County of London, if three or more persons are assembled in any street for betting, they may be arrested and fined £5 for obstructing the street.

Under the Municipal Corporations Act 1882, and Local Government Act 1888, a borough or county council may make a bye-law imposing a £5 fine on any person who shall "frequent and use" any street or public place for the purpose of betting with any person, or paying or receiving or settling bets (Thomas v. Sutters (1900), 69 L. J., Ch., 27).

By the Street Betting Act 1906, any person frequenting or loitering in streets or public places (other than a racecourse on the days on which horse races take place) on behalf either of himself or of any other person, for the purpose of bookmaking or betting or wagering, or agreeing

to bet or wager, or paying or receiving or settling bets, is punishable—

(*a*) On first conviction, summarily, by £10 fine;

(*b*) On second conviction, summarily, by £20 fine;

(*c*) On any subsequent conviction *or* on any conviction if the betting transaction was with a person under 16—on indictment, by £50 fine or 6 months' hard labour; or on summary conviction, by £30 fine or 3 months' hard labour;

and, in all cases, by forfeiture of all articles relating to betting found in his possession. The distribution in a street of handbills inviting persons to bet is an offence under this Act (Dunning v. Swetman (1909), 1 K. B., 774).

By the Betting Act 1853, secs. 1, 2, 3, no house, office, room, or other place shall be opened, kept or used—(1) for the purpose of the owner, occupier, or keeper thereof or any person using the same, or any person procured or employed by, or acting for or on behalf of, such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any way conducting the business thereof, betting with persons resorting (physically, R. v. Brown (1895)) thereto, or (2) for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier or person as aforesaid, as consideration for any promise or agreement (express or implied) to pay thereafter any money or valuable thing on any event or contingency of or relating to any horse race, or other race, fight, game, sport or exercise—under a penalty, on summary conviction, of £100 or 6 months' hard labour. A bookmaker walking about in Tattersall's Ring is not within secs. 1 to 3 of this Act (Powell v. Kempton Park Racecourse Co. (1899), 68 L. J., Q. B., 392); but one who pitches an umbrella in the ground and carries on his business under it, is (Brown v. Patch, *Ibid.*, 892). The receipt of deposits on bets in such a place is punishable summarily by £50 fine or

3 months' hard labour (Betting Act 1853, sec. 4). Coupon competitions offering a prize to the predictor of the winner in a horse race or football match fall within secs. 1 to 3 of the Act, if the newspaper containing the coupon is sold in England (R. v. Stoddart (1901), 70 L. J., K. B., 189), though the coupons have to be sent abroad (Mackenzie v. Hawke (1902), 2 K. B., 216). Betting advertisements are punishable summarily with £30 fine or 2 months, under the Betting Acts 1853 and 1874.

If a publican permits gaming on his premises, or contravenes the Betting Act 1853, he can be fined £10 under the Licensing (Consolidation) Act 1910, sec. 79.

The Betting and Loans (Infants) Act 1892 makes it punishable—with 3 months or £100 on indictment, or with £20 and (or) 3 months on summary conviction—to send for the purpose of profit a circular, notice, or letter, to a person known to be an infant, inviting him to bet or to borrow money; and by the Moneylenders Act 1900 if it is proved the document was in fact sent to an infant, the accused must prove reasonable ground for belief that the person to whom it was sent was an adult.

III.—PROCEDURE.

1.—The Courts.

The tribunals for enforcing the criminal law are:—

(1) The High Court of Parliament. The House of Lords is the only court that can try—(1) an indictment against a hereditary peer or peeress for treason or felony, after the grand jury at assizes have found a true bill, and the proceedings have then been removed by certiorari; and (2) articles of impeachment, preferred by the House of Commons against a peer for any crime and a commoner for a misdemeanour. The Lord High Steward's Court is substituted for the High Court when Parliament is not sitting; it consists of a Lord High Steward specially appointed for each occasion as judge, and such 12 or more members of the House of Lords as are summoned and attend as jury. If Parliament is sitting, or if it is a case of treason when Parliament is not sitting, all the members of the House of Lords must be summoned.

(2) The King's Bench Division. This Court has *original* jurisdiction (seldom exercised) over all indictable offences in Middlesex and all misdemeanours in England; and a *transferred* jurisdiction, *i.e.*, a power by writ of *certiorari* to remove indictments from the Central Criminal Court or assizes or quarter sessions for trial in the King's Bench or such other court as it orders.

(3) The Assize Courts—in which the judges sit by virtue of special commissions of the peace, of oyer and terminer, of gaol delivery, and nisi prius. Under the first commission, all justices are bound to assist the judges; under the second commission are tried indictments; under the third, prisoners in custody; and under the fourth, civil actions.

(4) The Central Criminal Court. It was created by statute in 1834, and sits twelve times a year to try indictable crimes committed in London, Middlesex, and parts of Essex, Kent, and Surrey (4 & 5 Wm. IV., c. 36). It also frequently tries indictments removed by certiorari (19 Vict., c. 16). The judges include the judges of the King's Bench Division, the Recorder, and the Common Sergeant.

(5) Sessions, which are either county or borough, quarter sessions or petty sessions. The petty sessions (or everyday police court) are held by unpaid justices of the peace, or a paid police magistrate in London, or a stipendiary magistrate in large towns; and their business is (*a*) to determine trivial offences without a jury, (*b*) to enquire into serious offences, which are then sent on to the assizes or quarter sessions or dismissed, and (*c*) in what are called special sessions to transact a variety of matters under various statutes, *e.g.*, licensing matters, which are now dealt with during the first 14 days in February by the Licensing (Consolidation) Act 1910. The quarter sessions sit four times a year, to hear appeals from summary convictions, and to try with a jury indictments for such crimes as statute law permits. The courts of quarter sessions are forbidden to try treason, murder, or any capital felony, or any felony which when committed by a person not previously convicted of felony is punishable by penal servitude for life (other than burglary, Burglary Act 1896), perjury, forgery, bigamy, libel, abduction, concealment of birth, and other offences enumerated in the Quarter Sessions Act 1842; three or more persons pursuing game by night (9 Geo. IV., c. 69, sec. 9); bribery (17 & 18 Vict., c. 102, sec. 10); fraudulent misdemeanours by trustees, bankers, etc., under secs. 75 to 86 of Larceny Act 1861; offences against the False Personation Act 1874, Criminal Law Amendment Act 1885, and Prevention of Corruption Act 1906. At the county quarter sessions, the justices of the peace themselves sit as judges; whilst at the borough quarter sessions, the

judge is a recorder, who must be a barrister of five years' standing. By the Assizes Relief Act 1889, when justices in petty sessions commit a prisoner to take his trial, he must be tried at quarter sessions, if that court has jurisdiction, and not at assizes (although the assizes come on first), unless (*a*) the justices for some special reason order otherwise, or (*b*) a judge in chambers otherwise orders. Statute law requires the quarter sessions for the county to be held in the first week following March 31st, June 24th, October 11th, and December 28th; but by the Quarter Sessions Act 1894 the date of any quarter sessions may be put forward or backward 14 days to prevent the sessions clashing with the assizes. The dates of borough quarter sessions are fixed by the recorder, so long as he holds his court in each quarter of the year.

(6) The Coroner's Court, which enquires into the cause of death, when anyone is killed, or dies suddenly, or in prison, or is found dead (Coroners Act 1887, sec. 3). The jury are usually householders, and it takes 12 of them to return a verdict. The coroner must take down in writing the evidence of the witnesses. The verdict is drawn up in the form of an inquisition, and signed and sealed by the coroner and the assenting jurors. If the jury find a verdict of murder or manslaughter, the coroner must issue his warrant to arrest the culprit and commit him to prison, and send the inquisition to the assize court with the evidence. It is, however, usual also to take the prisoner before magistrates, and prefer an indictment against him, although he can be tried merely on the inquisition.

(7) The Court for Crown Cases Reserved. This was created by the Crown Cases Act 1848, and its jurisdiction now vested in the Court of Criminal Appeal (1907 Act sec. 20). It tries questions of law arising on a trial at the Central Criminal Court or assizes or quarter sessions for treason, felony, or misdemeanour, which the judge thinks

proper to reserve for consideration after conviction. The judge himself states the points in a special case. The court has power to reverse, affirm, or amend the judgment of the court below, or to avoid the judgment and make entry on the record that the prisoner ought not to have been convicted, or to order judgment to be delivered or make whatever order justice requires. Its decision is final. But if it reverses the judgment of the court below, the accused can be indicted afresh (R. v. Drury (1849), 3 C. & K., 193). (11 & 12 Vict., c. 78; 36 & 37 Vict., c. 66.)

(8) Court of Criminal Appeal. This is created by the Criminal Appeal Acts 1907 and 1908. It is composed of all the judges of the King's Bench Division—and every appeal must be heard by an uneven number of judges, and not less than three, and is decided by the majority. The Master of the Crown Office is registrar of the court. Its decision is final, except that a further appeal lies to the House of Lords if the Attorney General certifies that the decision involves a point of law of exceptional public importance and that a further appeal is desirable in the public interest. The right of appeal is dealt with fully on page 174, *post*.

2.—Preliminary Sketch of Procedure.

An accused person may be put upon his trial at quarter sessions or assizes—

(1) On presentment by a grand jury, who initiate the proceedings from their own knowledge, and upon which the clerk of the court frames an indictment—a method very rarely used in modern practice; or

(2) On the inquisition of a coroner's jury; or

(3) On criminal information for misdemeanour; or

(4) On indictment preferred to the grand jury without previous notice to the accused—a right subject

now to the restrictions imposed by the Vexatious Indictments Act; or

(5) On indictment prepared after committal by justices of the peace.

The most usual way of taking proceedings for an indictable crime is for the prosecutor to go before a justice and make a verbal information or complaint, upon which a summons is issued commanding the offender to appear before the justice. If it is desired to apprehend the offender, the information or complaint must be in writing, and supported by the oath of the prosecutor; a warrant may then be issued at once. The justices before whom the accused is brought are bound immediately to examine into the circumstances of the alleged crime, and take, in the presence of the accused, the evidence on oath of the witnesses, which is reduced into writing and signed by the witnesses and the justices, and is then called the "depositions." If the justices consider that the crime alleged is not proved, or is of so trivial a nature as not to call for punishment, they dismiss the proceedings. But if they consider the evidence raises such a *primâ facie* case that the accused ought to be put upon his trial, they may dispose of the case summarily if they possess a statutory authority to do so, or may send the case for trial to the proper court and either commit the accused to prison or liberate him on bail. If the justices have no summary jurisdiction, they must send the case for trial. See generally hereon, the Indictable Offences Act 1848, which codifies the proceedings in the police court preliminary to an indictment.

Then follows the actual prosecution at quarter sessions or assizes upon indictment.

A criminal may be prosecuted at quarter sessions or assizes for an indictable crime by presentment, indictment, inquisition, and information.

Presentment is where the grand jury, acting from their

own knowledge, present some matter to the court (*e.g.*, non-repair of a highway) without taking evidence, and an indictment is subsequently framed upon the presentment: it is virtually obsolete.

Indictment is a written accusation of treason, felony, or misdemeanour, laid before a grand jury (of not less than 12 or more than 23, for it takes 12 to find a true bill) who then take enough evidence for the prosecution to satisfy themselves there is a *primâ facie* case, find a true bill, and present it to the court. If the grand jury are not satisfied with the evidence they throw out the bill, but a fresh one may be put before the grand jury at the next sessions or assizes. Usually an indictment is drawn upon the commitment of justices, but there was formerly no reason why an indictment should not be preferred to the grand jury direct. To remedy this in certain cases, the Vexatious Indictments Act (22 & 23 Vict., c. 17) was passed. The object of this Act was to prevent undue prosecutions, by putting a check on the former unlimited right of private persons to prefer an indictment to a grand jury without any previous enquiry before justices in the police court under the Indictable Offences Act 1848. The effect of the Vexatious Indictments Act is that for specified *misdemeanours*—viz., perjury, subornation, conspiracy, false pretences, keeping a gambling house or disorderly house, indecent assault, misdemeanours under Part 2 of the Debtors Act 1869, newspaper libels, misdemeanours under the Criminal Law Amendment Act 1885, and prosecutions under the Merchandise Marks Act 1887, and misdemeanours under the Children Act 1908—no indictment can be laid before a grand jury at quarter sessions or assizes unless (*a*) the prosecutor has been bound over by justices to prosecute, or (*b*) the accused has been committed by justices to take his trial, or (*c*) the indictment is by direction of a High Court judge or the Attorney General, or (*d*) the indictment is for perjury and is by direction of

a court, judge, or public functionary, authorized by the Criminal Procedure Act 1851, to direct such a prosecution. By the Criminal Law Amendment Act 1867, sec. 2, if the prosecutor elects to be bound over to prosecute—which he may do in all these misdemeanours if the justices decline to commit for trial and he wants to go on with the case—he may be condemned in costs unless he gets a conviction.

An inquisition is, practically, the verdict of a coroner's jury that some person is guilty of murder, or manslaughter. It is equivalent to an indictment found by a grand jury, and it is the coroner's duty to issue his warrant and commit the accused to gaol for trial at the assizes thereon. (For precedent, see Coroners Act 1887.)

A criminal information is a written accusation of misdemeanour, filed in the King's Bench Division, either (1) by the Attorney General where the offence is peculiarly against the Government (*e.g.*, a seditious libel), or (2) by the Master of the Crown Office upon a rule obtained from a divisional court, on motion, by a private person (see page 60 as to when the rule will be granted for libel). Where a crime is prosecuted by inquisition or information, the grand jury take no part in the proceedings. The trial of the criminal information usually takes place at the assizes, but judgment is delivered in the King's Bench.

The proceedings at the trial of an indictable crime at assizes or quarter sessions consist of (1) arraignment, *i.e.*, calling the prisoner to the bar by name, reading the accusation to him, and asking for his plea; (2) the plea, or prisoner's answer to the charge; (3) calling, challenging, and swearing the jury—which can only be a special jury if a case of misdemeanour is tried in the King's Bench at the Royal Courts of Justice; (4) opening the case for the prosecution; (5) evidence for the prosecution; (6) opening the defence; (7) evidence for defence; (8) summing-up the defence; (9) reply for the prosecution; (10) the judge's

summing-up to the jury; (11) verdict; (12) motion in arrest of judgment; and (13) judgment. After the trial, there may be (14) appeal to the Court of Criminal Appeal; (15) reprieve or pardon; (16) execution of the sentence.

3.—Normal Procedure for Indictable Crime.

(*a*) Police Court Proceedings.

A person accused of indictable crime is usually brought before justices of the peace or a magistrate.

This may be done in three ways—(1) Arrest without warrant. (2) Summons, issued by a justice on verbal information and served by a constable. (3) Arrest on a warrant, issued by a justice on information in writing and on oath.

The object is to find out if there is a *primâ facie* case against the accused—and the justices are ministerial officers to take evidence and consider if the accused ought to be sent for trial at quarter sessions or assizes.

The police court proceedings are regulated by the Indictable Offences Act 1848 (11 & 12 Vict., c. 42), as amended by the Criminal Law Amendment Act 1867 (30 & 31 Vict., c. 35), which deal with the information, summons, warrant, evidence, commitment for trial, and bail.

A constable may arrest without a warrant in numerous cases. These include: (1) For treason or felony, or breach of the peace, committed in his presence; (2) on reasonable suspicion of felony; (3) on a reasonable charge of felony; (4) persons loitering by night and suspected of felony (actually committed or intended) under the Larceny or Malicious Damage or Offences Against the Person Acts 1861; (5) suspicious loiterers by night in the Metropolitan Police District; (6) anyone found committing* a street offence

* *I.e.*, in the act of committing (R. v. Phelps (1841), C. & M., 180).

under the Metropolitan Police Act 1839, or the Towns Police Clauses Act 1847 ; (7) under a number of special statutes.

Any person, *i.e.*, a private person as well as a constable, may arrest another without a warrant—(1) if he is present when another commits a felony, or dangerous wound, or breach of the peace ; (2) in aid of a police officer in execution of his duty who asks for his help in effecting an arrest or suppressing an affray, and in this case the person called on is guilty of a Common Law misdemeanour unless he renders the assistance asked for (R. v. Sherlock (1866), 1 C. C. R., 20); (3) if he finds anyone committing* an indictable offence by night (Prevention of Offences Act 1851, sec. 11), or any offence under the Larceny Act (except angling in the daytime), or under the Coinage Act or Vagrancy Acts ; (4) if property is offered to him for sale or pledge which he reasonably suspects is the subject of an offence under the Larceny Act ; (5) on reasonable suspicion of felony, subject to an action for false imprisonment unless he is able to prove that a felony had actually been committed and that there was reasonable suspicion that the person arrested was guilty ; and (6) upon hue and cry.

The owner of property and his servants and agents can arrest persons found committing† offences under the Night Poaching Act, Malicious Damage Act, Metropolitan Police Act, and Towns Police Clauses Act.

In all cases of arrest, it is the duty of the person making the arrest to bring his prisoner before a magistrate as soon as possible.

If a person is arrested without warrant for an offence, and cannot be brought before a court of summary jurisdiction within 24 hours, a superintendent or inspector of police, or a police officer in charge of the police station, shall

* *I.e.*, in the act of committing (R. v. Phelps (1841), C. & M., 180).

† These words are construed strictly (R. v. Phelps, *supra*), and mean found in the act of committing the offence.

enquire into the case and shall (unless the offence is of a serious nature) discharge the prisoner on his recognizance (with or without sureties) in a reasonable sum to appear at the day and place named therein (Summary Jurisdiction Act 1879, sec. 38). Also, a borough constable can admit to bail a person arrested without warrant for a petty misdemeanour, if he cannot be taken forthwith before a justice, on recognizance to appear before a justice (Municipal Corporation Act 1882, sec. 227); and a constable in charge of a police station in the London district can do the same under secs. 69–71 of the Metropolitan Police Act 1839. And by the Children Act 1908, sec. 96, if a person apparently under 16 is arrested with or without warrant, and cannot be taken forthwith before a court of summary jurisdiction, the police officer in charge of the station shall release him on recognizance to appear, unless the charge is homicide or grave crime, or it is desirable to remove him from association with a reputed criminal or prostitute, or the release would defeat the ends of justice.

A summons can be issued by a justice of the peace upon a verbal and unsworn information of a crime. It is addressed to the accused, and requires him to appear, at a specified time and place, in the police court, to answer a specified charge. The summons is served by a constable, who either gives it to the accused personally or leaves it with some person for him at his usual or last known place of abode. The service must be a reasonable time before the hearing. If the summons is not obeyed, the justices on proof of service can issue a warrant to arrest the accused for further enquiry into the charge.

If justices refuse to grant an application for a summons, the King's Bench will grant a mandamus or a rule under sec. 5 of the Justices Protection Act 1848—unless the refusal was on the merits of the case (R. v. Adamson, (1875), 45 L. J., M. C., 46).

A warrant is issued by a justice, on an information in writing and on oath. It must be under the hand and seal of the justice, and may be addressed to any constable or other person by name, or to the constables of the district within which the justice has jurisdiction. It must specify the crime, name or describe the accused, and order him to be arrested and brought before a justice to answer the charge and be dealt with according to law. Except in a case of felony, the constable must have the warrant in his possession at the time of making the arrest (Codd v. Cabe, 1 Ex. D., 352). A warrant can be issued on a Sunday, and remains in force until executed; but may not be executed on a Sunday, except for treason or felony, or breach of the peace (29 Car. II., c. 7, sec. 6). Outer and inner doors may be broken open to effect arrest under warrant, after demand made for admittance (Foster, 320). The warrant is usually shown or read to the accused, who is then taken in custody to the police station.

A warrant can be executed without having to be "backed" in the following cases:—

(1) Within the county or borough for which it is issued, or, in case of fresh pursuit, within seven miles as the crow flies outside such jurisdiction (11 & 12 Vict., c. 42, sec. 10; c. 43, sec. 3; 52 & 53 Vict., c. 63, sec. 34);

(2) A metropolitan police officer can execute, anywhere in the United Kingdom, a warrant, issued by a metropolitan police magistrate (2 & 3 Vict., c. 71, sec. 17);

(3) Borough police can execute a warrant issued by a justice for a borough, in any county in which any part of the borough is situate or within seven miles from the borough boundary (Municipal Corporations Act 1882, sec. 223);

(4) The police of Northumberland and Cumberland can

execute English warrants in the border counties of Scotland (20 & 21 Vict., c. 72, sec. 11).

If an accused person has escaped out of the jurisdiction of the justice who issued the warrant, any justice of the county or place where the accused is supposed to be can "back" it—*i.e.*, on sworn proof that the signature of the justice issuing the warrant is genuine, he signs an endorsement on the back of the warrant which makes it enforceable in his jurisdiction (11 & 12 Vict., c. 42, sec. 11). A warrant may be backed throughout England, Scotland, Ireland, the Channel Islands, and the Isle of Man (11 & 12 Vict., c. 42, secs. 12, 13, 15; c. 43, sec. 3; 44 & 45 Vict., c. 24, sec. 4).

If the accused has escaped to any other part of British dominions, he may be arrested and brought back under the Fugitive Offenders Act 1881—either

(*a*) upon an English warrant, duly endorsed by the colonial governor or a judge of the supreme court in the colony, on proof that the warrant was issued by a lawful authority; or

(*b*) upon a provisional warrant issued by a colonial magistrate, upon such information and under such circumstances as would justify his doing so if the alleged offence had been committed within his own jurisdiction—

provided the offence is treason, or piracy, or any crime punishable on indictment or information with 12 months' hard labour or any greater punishment, and even although the crime is not an offence in the colony where the arrest takes place.

If the accused has escaped to a foreign country, he can only be got back under the terms of an extradition treaty with that country.

The extradition of a fugitive criminal from England to a foreign country is governed by the Extradition Acts 1870,

1873, 1895 and 1906. There must be a treaty with the foreign country, and an order in Council applying the Acts thereto. The application for surrender is made by a diplomatic representative of the foreign country to a Secretary of State, and the latter orders the chief magistrate at Bow Street to issue a warrant. That magistrate then hears the case in the same way as if the fugitive were accused of an indictable crime committed in England. Before an order for surrender can be made, the magistrate must be satisfied—(1) that the crime charged is within the treaty with the demanding foreign country, (2) that it is a crime against the law of the demanding country (*Re* Percival (1907), 1 K. B., 696), (3) that it is a crime to which the Extradition Acts apply, (4) that the foreign warrant is duly authenticated, (5) that there is such evidence of guilt as would justify a committal for trial by English law (*Re* Arton (1896), 1 Q. B., at 513), and (6) that the crime was committed within the territorial jurisdiction of the demanding country or on its ships on the high seas. The foreign depositions or certified copies thereof are admissible in all cases (*Ex parte* Counhaye (1873), 8 Q. B., 410). But the fugitive is not to be surrendered for any offence of a political character (*e.g.*, homicide in the course of a rebellion (*Re* Castioni (1891), 64 L. T., 344), though anarchist crimes are not political offences (*Re* Meunier (1894), 2 Q. B., 415); and the foreign State must agree that the fugitive shall only be tried for those past offences for which his surrender is granted; and if accused of some offence in England, the fugitive will not be surrendered until he has been acquitted or served his punishment for it. If the magistrate commits the fugitive for extradition, he is detained in custody for 15 days, in order that he may apply to the King's Bench for a writ of habeas corpus, by motion supported by affidavit, to decide whether his surrender is lawful. After the 15 days (or the decision on the habeas corpus) the Secretary of State issues

a warrant for his surrender, and unless he is then taken abroad within two months a High Court judge can order him to be set at liberty.

The English courts can try all offenders, whether British subjects or foreigners, for (1) crimes committed in England; (2) all crimes committed within one marine league from low water mark, except on a foreign ship of war (41 & 42 Vict., c. 73); (3) crimes committed on a British ship, whether on the high seas, or in foreign harbours, or in tidal rivers below bridges (R. v. Lopez (1858), 27 L. J., M. C., 48; R. v. Anderson (1869), 38 L. J., M. C., 12); and (4) piracy. They can also try a British subject for the following crimes committed abroad—treason (35 Henry VIII., c. 2, sec. 1), homicide on land abroad (24 & 25 Vict., c. 100, sec. 9) or when only the death or the cause of death takes place in England (*Ibid.*, sec. 10), bigamy elsewhere than in England or Ireland (R. v. Earl Russell (1901), 70 L. J., K. B., 998; R. v. Audley (1907), 1 K. B., 383), misdemeanours committed in India (13 Geo. III., c. 63), misdemeanours by servants of the Crown (42 Geo. III., c. 85), crimes by colonial governors (11 & 12 Wm. III., c. 12), offences against the Slave Trade Acts, the Foreign Enlistment Act 1870, the Explosives Act 1883, the Official Secrets Act 1889, and the Dockyards Protection Act 1772.

As soon as a person accused of indictable crime is brought before one or more justices, they must take the evidence on oath or affirmation of those who know the facts, in the presence of the accused: but the place where they do this is not an open court (R. v. Katz (1900), 64 J. P., 807), and they may exclude the public (R. v. Mortimer (1895), 60 J. P., 11)—unless indeed it is a case in which they have the power to adjudicate summarily and intend to do so.

If an offender is brought before a justice and accused of an indictable crime committed outside his jurisdiction, the justice must examine such witnesses and receive such

evidence as are produced before him. And if he thinks the charge sufficiently proved, he must commit for trial to quarter sessions or assizes where the offence was committed. But if he thinks the charge not proved, he must commit the accused to appear before justices where the offence was committed for further enquiry, and transmit to such justices the information, depositions, and recognizances of witnesses.

If the enquiry in the police court cannot be conveniently finished at one sitting, the justice may by warrant remand the accused person to prison for 8 clear days, or may verbally direct him to be kept in custody for 3 clear days, or may let him out on bail.

The attendance of witnesses for the prosecution (11 & 12 Vict., c. 42, sec. 16) and defence (30 & 31 Vict., c. 35, sec. 4) may be compelled by a witness summons issued by a justice, provided the witness is in his jurisdiction, and by warrant if such summons is disobeyed. If the witness is outside the local jurisdiction of the justice, a Crown Office subpœna (*ad testificandum* or *duces tecum*) must be obtained.

Each witness for the prosecution is sworn (or affirmed), examined, cross-examined, and re-examined. The accused has an absolute right to cross-examine, personally or by his solicitor or counsel (R. v. Griffiths (1886), 54 L. T., 281). A witness who refuses to answer questions may be imprisoned for 7 days.

The evidence given by each witness is taken down in writing by the clerk to the justices as it is given in court, and this writing is afterwards read over to the witness and is signed by him and by the justice before whom it was taken, and is then called the "deposition" of that witness (11 & 12 Vict., c. 42, sec. 19). The provision as to the signature of the deposition by the witness is merely directory (R. v. Holloway (1901), 65 J. P., 712).

Depositions play an important part in indictable cases. They form the material from which the indictment is

prepared; the originals are checked by the judge as the witnesses give *viva voce* evidence at the trial; and if a witness is dead or too ill to attend, his deposition can be read to the grand jury and the petty jury on proof that it was taken in the presence of the accused and that he had a full opportunity of cross-examining.

If a justice is satisfied that any person, who is dangerously ill and in the opinion of a registered medical man not likely to recover, is able and willing to give material information relating to any indictable offence or any person accused thereof, the justice may take the deposition of such sick person; and shall transmit it—if any person has been committed for trial—to the clerk of the court which is to try him, and in other cases to the clerk of the peace. At the trial of any offender or offence to which it relates, this deposition may be read in evidence for or against the accused on proof (1) that the witness is dead or is not reasonably likely to ever be able to travel or give evidence, and (2) that reasonable notice *in writing* of the intention to take it was given to the prosecutor or accused against whom it is used, and (3) that such person or his counsel or solicitor actually had (or might have had if he had chosen to be present) full opportunity of cross-examining the witness (30 & 31 Vict., c. 35, sec. 6). Due provision is made that a person in actual custody, by or upon whom such a notice as just mentioned is served, shall be present at the taking of the evidence (sec. 7).

After the whole of the evidence for the prosecution is finished, the justice holding the enquiry shall cause the depositions to be read to the accused, and then say to him: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you on your trial." The justice ought

(but is not obliged) to also tell him he has nothing to hope from any promise of favour, or to fear from any threat, which has been held out to induce him to make any admission or confession of guilt. The prisoner's statement is then taken down, read over to him, and signed by the justice; and is afterwards read at the trial at the close of the evidence for the prosecution. (11 & 12 Vict., c. 42, sec. 18.)

The justice must next ask the accused if he desires to call any witnesses; and, if so, their depositions are duly taken in the presence of the accused, and such of them as the justice considers give evidence material to the case, or tending to prove the innocence of the accused, must be bound by recognizance to appear at the trial and give evidence (30 & 31 Vict., c. 35, secs. 3, 4).

After hearing all the evidence against the accused, if the justice thinks it is not sufficient to put him on his trial for any indictable offence, the accused must be discharged (11 & 12 Vict., c. 42, sec. 25); and in this case the justice can order the prosecutor to pay the accused's costs if he is of opinion that the charge was not made in good faith, but when the costs ordered to be paid exceed £25 the prosecutor can appeal against the order to quarter sessions (Costs in Criminal Cases Act 1908, sec. 6); and (instead or in addition) can order the costs of the prosecution or defence or both, so far as regards the expenses and loss of time of the witnesses, and the legal expenses of the prosecutor, to be paid out of the county or county borough fund (*Ibid.*, secs. 1, 10). But if the justice thinks the evidence is sufficient to put the accused on his trial, or to raise a strong or probable presumption of his guilt, the justice must commit him for trial, with or without bail (11 & 12 Vict., c. 42, sec. 25). When the justice commits for trial, he may bind by recognizance the prosecutor to appear at the next assizes or quarter sessions to prosecute, and the witnesses to appear and give

evidence; and if any witness refuses to be so bound, he may be committed to prison until the trial (*Ibid.*).

By the Poor Prisoners Defence Act 1903, when any person is committed for trial for any indictable crime, the committing justices can make an order for him to have legal aid (*i.e.*, solicitors and counsel, and a copy of the depositions, and the expenses of witnesses) paid for out of the county or county borough fund—provided (1) the nature of the defence as disclosed in the police court is such that in the interests of justice the prisoner should have legal aid to make his defence clear, and (2) the prisoner's means are insufficient to enable him to obtain such aid. Also, under the same conditions, the assize judge or chairman of quarter sessions can make the same order after reading the depositions.

As soon as possible after committing for trial, the justices' clerk must send to the clerk of assize (or clerk of the peace, if a sessions case) the information (if any), the depositions, the statement of the accused, and the recognizances of the witnesses and of any bail (11 & 12 Vict., c. 42, sec. 20). At any time before the first day of the assizes (or sessions) the accused can have a copy of the depositions on paying 1½d. for each 90 words (*Ibid.*, sec. 27).

Bailing a prisoner means releasing him from the custody of the officers of the law and trusting him to the private custody of sureties, upon they and he giving security by recognizances that he will appear at the proper time and stand his trial. When justices have power to take bail, they can now do so without any surety, if satisfied that will not defeat the ends of justice (Bail Act 1898). The discretion as to the amount of the security and as to the sufficiency of bail is for the justices; but the amount must not be excessive (Bill of Rights). But, in practice, an infant, or married woman, or person in custody, or an accomplice, or the solicitor of the accused, is never accepted. The sureties are bound to give an account of their property, and take an oath that it is

sufficient to answer the amount fixed by the justice; often 24 hours' notice is required so that the police may satisfy themselves as to the sureties' sufficiency; and, as a rule, the sureties must be householders. The bail can at any time terminate their liability, either by arresting the accused themselves or getting him arrested on a warrant. If the accused does not surrender at the trial, the recognizances are declared forfeited, and payment is enforced either under 22 & 23 Vict., c. 21, sec. 32, or by the sheriff under the Levy of Fines Acts 1822 and 1823.

Justices have no power to grant bail for treason except by order of a Secretary of State or High Court judge. In every felony (including murder) justices may take bail. They may also take bail for the misdemeanours of false pretences, receiving goods stolen or obtained by false pretences, perjury, subornation of perjury, concealment of birth, exposure of the person, riot, assault under conspiracy to raise wages, assault on peace officers executing their duty, breach of duty of peace officers, and for all misdemeanours in which the costs of the prosecution may be allowed out of the county or borough fund or rate. In all other misdemeanours, justices must* admit to bail (11 & 12 Vict., c. 42, sec. 23). When a magistrate is bound to accept bail, the refusal to accept it is a misdemeanour, and will also give rise to an action for damages on proof that the magistrate was actuated by malice in fact in performing his judicial duty. When justices have a discretion, they ought not to refuse bail unless satisfied such refusal is necessary to secure the accused's attendance at the trial (R. v. Rose (1898), 78 L. T., 118).

The King's Bench can admit to bail for any indictable offence, and there is no appeal from its decision (R. v. Foote,

* As by the Costs in Criminal Cases Act 1908 the costs of prosecuting all misdemeanours may now be allowed out of the county or county borough fund, it would seem that justices have a discretion in all cases.

48 L. T., 394). The application is by a summons, served on the prosecutor and the committing justices (or coroner), to attend before a judge in chambers and to show cause against a writ of habeas corpus or against bail. Apparently the King's Bench judge is bound to grant bail in misdemeanour (R. v. Atkins (1870), 49 L. T., 421; *Re* Frost (1888), 4 T. L. R., 759).

(*b*) The Indictment.

This was defined on page 141, *ante*. It used to be drawn up in Latin, but is now in English, on parchment, written in words without figures, except when it sets out the facsimile of a document. The accused is entitled to have it read over to him once, but has no right to a copy except in treason. It is drawn up either by the officer of the court (clerk of arraigns, clerk of assize, or clerk of the peace), or by counsel for the prosecutor.

Indictment for Murder.

Central Criminal Court, to wit. } The jurors for our Lord the King, upon their oath present—That AB, on the day of , 19 , at within the jurisdiction of this court feloniously, wilfully, and of malice aforethought did kill and murder CD Against the peace of our Lord the King, his Crown and dignity.

Indictment for Larceny by a Clerk [*or Servant*].

Essex, to wit. } The jurors for our Lord the King, upon their oath present—That EF on the

1st count. day of , being then employed as clerk [or servant] to GH, then, and whilst he was so employed, one leather portmanteau of and belonging to the said GH, master of the said EF, feloniously did steal, take and carry away Against

the form of the statute in that case made and provided, and against the peace of our Lord the King, his Crown and dignity.

2nd count. And the jurors aforesaid on their oaths aforesaid further present—That the said EF afterwards and within the space of six calendar months from the time of the committing of the offence in the first count of this indictment charged and stated, to wit, on the day of was clerk, [or servant] to the said GH, and that the said EF while he was such clerk [or servant] to the said GH, to wit, on the day of one overcoat and three pairs of trousers, belonging to the said GH, feloniously did steal, take and carry away Against the form, etc.

The reader will notice from the precedents just given that every indictment has four parts—the venue, the commencement, the statement, and the conclusion.

The venue is in the margin only (14 & 15 Vict., c. 100, sec. 23), and is a short description of the district for which the court sits (R. v. Stanbury (1862), 31 L. J., M. C., 88). Venue means the place from which the jury who will try the case are to come. At Common Law there were two venues in an indictment: (1) in the margin, the name of the county from which the grand jury were to come, who find a true bill, and (2) in the body, the name of the parish where the offence was committed, from which the petty jury came to try the case. By the Criminal Procedure Act 1851 no venue need be stated in the body. The Common Law rule is that the venue shall be the jurisdiction within which the offence was committed; this is now subject to some statutory exceptions.

The commencement is simply the formal words, "The jurors for our Lord the King upon their oath (or affirmation) present."

The statement or body must set out with certainty every fact necessary to constitute the crime charged. Any material omission is fatal, if it is challenged before the verdict; but nothing need be alleged which it is unnecessary to prove. The main object of this precision is to let the accused know the exact charge he has to meet; and anything which is not openly stated or necessarily implied in the statement of the offence is presumed in favour of the accused, if he chooses to claim its benefit before verdict. An indictment for felony is incurably bad if it omits the word *feloniously*, but as the accused never stood in real peril upon it he can be indicted afresh, *e.g.*, where A was tried for wounding a horse and found guilty, but the indictment was then quashed for omitting the word *feloniously*, the court ordered A to be kept in custody while a fresh indictment was drawn up and put before the grand jury (who had not been discharged). An indictment for misdemeanour ought to contain the word "unlawfully." In murder, the statement must charge "feloniously wilfully and of malice aforethought did kill and murder." In manslaughter, "feloniously did kill and slay." In larceny, "feloniously did steal, take and carry away." In burglary, between the hours of 9 p.m. and 6 a.m., "feloniously and burglariously" did break and enter the dwellinghouse of AB with intent to commit some named felony.

The conclusion may safely be omitted since 14 & 15 Vict., c. 100.

Formerly the evidence had to agree strictly with the indictment as drawn, there being no power to amend. Thus in R. v. Earl Cardigan (1841), 4 St. Tr. (N.S.), 601, the accused was acquitted because he was indicted for shooting at a person with five names and the evidence only proved the person shot at had three names. But now, by the Criminal Procedure Act 1851, the court can amend the indictment on whatever terms (if any) seem just as regards

the name of any *place*, the name and description of any alleged *owner* of property, or of any person alleged to be *injured*, or of *any* person or thing or the ownership of property named therein—provided that no amendment can be made which alters the nature or quality of the offence charged (R. v. Wright (1860), 2 F. & F., 320); or which will substitute one offence for another (R. v. Benson (1908), 2 K. B., 270), or which will add an essential averment (*e.g.*, with intent to defraud) the omission of which makes the indictment bad (R. v. James (1871), 12 Cox, 127).

An indictment often contains several counts, each count being really a separate indictment alleging a complete offence.

If one count of the indictment charges more than one distinct offence (*e.g.*, murder and larceny), it is bad for duplicity, unless all form part of one transaction. There are two exceptions to this rule—(1) in burglary, when the accused may be charged both with having broken and entered the house with intent to commit a felony, and also with having committed the felony (*e.g.*, larceny of plate); and (2) in embezzlement by clerks, servants, or public servants, or policemen, when as many as three distinct embezzlements, committed against the same master within one inclusive period of six months, may be (but rarely are) charged in one count (Larceny Act 1861, sec. 71).

Separate counts sometimes charge separate offences, or often charge the same offence in different ways. Thus an indictment for misdemeanour may charge A upon the same facts—in count 1 with assault on B, causing actual bodily harm; in count 2 with assault on B, causing grievous bodily harm; in count 3 with unlawfully wounding B; and in count 4 with a common assault on B (R. v. Miles (1890), 17 Cox, 9).

If separate felonies (*e.g.*, robbery, arson and murder) are charged in separate counts, it is the practice of the court to

require the prosecutor to elect on which one only he will proceed; whether the other counts are quashed or are kept alive for separate trials seems doubtful. But even in practice, the accused may be tried at the same time upon (1) counts for feloniously stealing and for feloniously receiving the same property (Larceny Act 1861, sec. 92); and (2) counts for three acts of stealing (*Ibid.*, sec. 5), or of embezzlement (*Ibid.*, sec. 71), committed against the same prosecutor in one inclusive period of six months, and (3) upon counts for forging and for uttering the same instrument.

When different misdemeanours are joined in separate counts, the court has power to make the prosecutor elect or to order separate trials, if a fair trial would be prejudiced by trying all at once (R. v. King (1897), 1 Q. B., 214).

If a count for felony is joined with one for misdemeanour, the indictment will be quashed on demurrer or after a general verdict, because the right of challenge and other incidents of trial differ; but a verdict convicting of one only is good (R. v. Ferguson (1855), 24 L. J., M. C., 61).

Lastly, statute law allows a count charging a previous conviction to be added to any indictment for felony, or for uttering or having in possession bad coin, or for false pretences, or for conspiracy to defraud, or for being found by night with housebreaking tools. The form of this count runs as follows: "And the jurors aforesaid upon their oath aforesaid do further present that heretofore and before the commission of the [felony] hereinbefore charged to wit at on the day of 19 the said AB was convicted of felony which said conviction is still in full force strength and effect and not in the least reversed, annulled, or made void." The object of this count is simply to increase the power of the judge to punish, *e.g.*, for simple larceny after a conviction for felony the judge can give 10 years, and for any other felony after a previous conviction for felony he may give a life sentence. This count is not disclosed to

the jury until after they have tried the present crime and found the accused guilty. He is then asked if he pleads guilty to the previous conviction, and if he does not it must be proved by production of the record or of a certificate of the conviction and by evidence of identity. (See Prevention of Crimes Act 1871, sec. 9.)

The Grand Jury.

When the assizes or quarter sessions are opened, a grand jury are sworn. The number of grand jurors must not exceed 23 or be less than 12. It takes 12 of them to return a true bill. The grand jurors at assizes are usually county magistrates, and at quarter sessions are persons qualified to serve as jurors. After the judge has charged them (*i.e.*, given advice about the various cases), the grand jury retire to their own room and the bills of indictment are sent to them. Neither side is represented before the grand jury. But the names of all witnesses for the prosecution are written on the back of the indictment, and the grand jury send for all or any of these. Each witness called is sworn by the foreman, who puts his initials against the name of that witness on the back of the indictment (Grand Jury Act 1856). If 12 jurors think there is a *primâ facie* case, they find a True Bill; otherwise they write No True Bill on the indictment, and it is said to be ignored. The grand jury may find a True Bill on one or more counts, or against one or more of the accused, and No True Bill on or against the other counts or accused. All the bills are then returned into court. The grand jury cannot hear any evidence for the accused. If they throw the bill out, it can be presented again at the next sessions or assizes.

Certiorari.

An indictment found in any court may be removed into the King's Bench Division of the High Court by writ of *certiorari*, obtained on motion to a divisional court or on summons before a judge in chambers, supported by affidavit. The effect is to change the court of trial. Power to grant a *certiorari* is discretionary. It must be shown either (1) that there will be a difficult point of law that ought to be tried by a High Court judge, or (2) that a special jury is desired—which in criminal cases can only be had for misdemeanour where the indictment is in the King's Bench, or (3) that by local prejudice the trial below could not be impartial, or (4) that it will be necessary to send the jury into a different jurisdiction to view property, or (5) that the Attorney General applies for the Crown, or (6) that the defendant is a corporation which cannot appear in the court below. (Crown Office Rules, 29.)

If granted, the writ is issued from the Crown Office as soon as the applicant has entered into recognizances with sureties, in a sum fixed by the court, to pay the other party's subsequent costs if the other party wins. The writ is then served on the proper officer of the court originally fixed for the trial, and he transmits the indictment or inquisition as ordered by the writ. (See Crown Office Rules 1886.) The writ may order the trial to take place in the King's Bench at the Central Courts of Justice, or at the Assizes, or at the Central Criminal Court under 19 Vict., c. 16. Either side may apply for the writ before issue is joined.

The Central Criminal Court (4 & 5 Wm. IV., c. 36, sec. 16) or an assize court (5 & 6 Vict., c. 38, sec. 2) can also remove to itself by *certiorari* any indictment found at quarter sessions within its jurisdiction.

If the interests of justice require it, the fiat of the

Attorney General can be had to enter a *nolle prosequi*, *e.g.*, to enable one of the accused to be called as a Crown witness. This is no bar to a fresh indictment.

(*c*) The Trial.

If an indictment is found by a grand jury against a person who is not in court to be tried, the clerk of assize (or clerk of the peace, at quarter sessions) on payment of a shilling by the prosecutor, must furnish him with a certificate of indictment found; and on production of this certificate to any justice of the peace where the offence was committed or the accused resides, such justice must issue a warrant to arrest the accused for trial. (Indictable Offences Act 1848, sec. 3.)

Or a Bench Warrant could be obtained from the court at which the indictment is found, but this seems only to be used if immediate arrest is important. Or the indictment may be moved into the King's Bench and proceedings taken there to declare the accused an outlaw; such proceedings are in practice not resorted to (the last judgment of outlawry was R. v. Swabey in 1855), but would have the effect of a conviction in treason or felony, and in misdemeanour of a conviction for contempt. Judgment of outlawry can only be avoided by pardon or by statute.

After the grand jury have found a true bill, and the accused is present in court, comes the arraignment. This consists in calling the accused to the bar of the court by name, telling him what he is charged with, and asking if he pleads Guilty or Not guilty.

If the accused does not answer, a jury of 12 must be sworn to try whether he is mute of malice or by the visitation of God. If he is found to be mute of malice, the court orders a plea of Not guilty to be entered, and the trial

goes on (Criminal Law Act 1827, sec. 2). If the jury find that he is mute by the visitation of God, the jury may be resworn to try if he is fit to plead; and if he is unable to speak and is deaf but can read and write, or if he can communicate by signs which can be interpreted to the court by some person present, the jury are directed to find that he is able to plead; and he can then plead by writing or by signs. Where the accused could not read or write and could only speak in a whisper, and not sufficiently to instruct a solicitor, but was sane, his whispered plea was taken, and the trial adjourned (R. v. Harris (1897), 61 J. P., 792). If the jury find he is not able to plead, the jury are resworn to try whether he is sane or not; and if they are satisfied he has not intelligence enough to understand the proceedings, they find him not sane, and the judge orders him to be detained in custody without trial during the pleasure of the Crown (Criminal Lunatics Act 1800, sec. 2; R. v. Stafford (1909), 2 K. B., 81). If the jury find him sane, in a case of misdemeanour his counsel may plead Not guilty for him, and the trial goes on; but in a case of felony the trial is adjourned (R. v. Dyson (1831), 1 Lew., 65).

If the accused pleads Guilty, judgment will be pronounced; but the court allows the plea to be withdrawn before sentence.

Unless the accused stands mute or pleads Guilty, he may move to quash the indictment, or demur, or plead.

A motion to quash the indictment is an oral application to the court to annul it. It is based on some defect appearing on the face of the indictment, *e.g.*, that the court has no jurisdiction, or the charge is not made with certainty, or some material allegation is omitted.

Objection to a formal defect can be taken *before* the petty jury are sworn, and the court may then amend the indictment (Criminal Procedure Act 1851, sec. 25). Objection to a substantial defect can be taken by motion to quash the

indictment, which may be made at any time before verdict (R. v. James (1871), 12 Cox, 127); or by demurrer when called upon to plead, but before pleading; or if the defect is not cured by verdict (R. v. Stroulger (1886), 55 L. T., 122), by motion in arrest of judgment after verdict found; or by appeal to the Criminal Appeal Court after conviction. If the indictment is quashed on motion before verdict, this does not have the effect of an acquittal, for there has been no trial, and a fresh indictment may be put before another grand jury or before the same one if it is still sitting.

A demurrer is a document by which the accused admits the facts charged in the indictment to be true, but alleges that they do not in law amount to the crime charged against him. If the demurrer is decided against the accused, it operates as a conviction in felony, and also in misdemeanour unless special leave is given to plead afterwards (R. v. Faderman (1850), 3 C. & K., 353); but if it is decided in favour of the accused, it operates as an acquittal, unless the objection is to a merely formal defect, in which case the indictment is at once amended under the Criminal Procedure Act 1851, sec. 25 (*ante*, page 156). Many defects in indictments are now cured by verdict—as to which see Criminal Law Act 1826, sec. 21; Heyman v. R. (1873), 8 Q. B., 105; R. v. Stroulger (1886), 55 L. T., 122. But when this is not the case, the same point that is raised by demurrer can also be raised by motion in arrest of judgment or by appeal after conviction. Hence demurrers are rarely met with.

Plea. The pleas possible in a criminal case are: (1) to the jurisdiction, *e.g.*, if a person is indicted at quarter sessions for murder; (2) in abatement, which is a dilatory objection, and became disused after the Criminal Law Act 1826, sec. 19, and was abolished by the Criminal Procedure Act 1851, sec. 24; (3) special pleas; (4) in defamatory

libel, the statutory plea that the libel is true and was circulated for the public welfare, introduced by sec. 6 of the Libel Act 1843; and (5) the general issue, *i.e.*, not guilty. The accused may plead to the jurisdiction or a special plea, and on that being decided against him may then plead the general issue.

Special pleas in bar are *Autrefois acquit*, *Autrefois convict*, and *Pardon*. The plea of *Autrefois acquit* implies that the accused has been previously tried for the same offence and acquitted. Its effect is to bar the indictment on proof—(*a*) that the former indictment was sufficient in law; (*b*) that the same offence was charged, *i.e.*, that the facts charged in the second indictment and the evidence necessary to prove them would have been sufficient to procure a legal conviction on the first; and (*c*) the acquittal. Thus an acquittal for murder is no bar to a subsequent indictment on the same facts for attempting to procure abortion; but it bars a subsequent indictment for manslaughter. An acquittal as principal in felony is no bar to a subsequent indictment as accessory after the fact. An acquittal by a court of competent jurisdiction abroad is sufficient for this plea. The plea of *Autrefois convict* means that the accused has been previously tried and convicted for the crime now charged or for some crime of which he can be lawfully found guilty on the present indictment, and bars a subsequent indictment for the same offence. Thus, a summary conviction for common assault bars a subsequent indictment on the same facts for doing grievous bodily harm (R. v. Miles (1890), 17 Cox, 9); but it would not bar a subsequent indictment for murder or manslaughter (R. v. Friel (1890), 17 Cox, 325). And a conviction for false pretences is a bar to a subsequent indictment for larceny of the same goods (R. v. King (1897), 1 Q. B., 214).

The plea of Not guilty is made orally, and raises the general issue, *i.e.*, it lays upon the prosecution the task of

proving every material fact alleged in the indictment, and allows the accused to give in evidence anything of a defensive nature. It is usually the only possible plea, *e.g.*, the plea of Son assault demesne available in a civil action for assault is unknown to criminal law.

After the plea of Not guilty, issue is joined for the Crown. The petty jury of 12 who are to try the case will next be called, challenged, and sworn.

A juror must be a male person, between 21 and 60, and must own £10 a year in freeholds or copyholds, or £20 a year in leaseholds, or be rated to the poor rate at £30 in Middlesex or £20 elsewere, or must occupy a house with 15 windows (Juries Act 1825). Special jurors are persons who legally rank as esquires or of higher degree, bankers, merchants, and persons rated at £100 or, for farms, £300 (Juries Act 1870). The Juries Act 1870 gives a long list of exemptions, which extend even to coroners' juries (*Re* Dutton, 1892). An alien may serve if he has been domiciled in England for 10 years (1870 Act).

A special jury can be had, by either side, to try a case of misdemeanour if the record is in the King's Bench.

Prior to the Naturalization Act 1870, an alien could have claimed to be tried for felony or misdemeanour by a jury *de medietate linguae*, of whom half were aliens.

Challenges must be made after issue joined, but before the swearing of the jury. They are either peremptory (*i.e.*, without alleging any reason) to individual jurors, or for cause shown.

The Crown has no unlimited right of challenging without showing cause, except where a sufficient jury is left after such challenges; but the prisoner can challenge peremptorily, 20 in all felonies and in the treason of attempting the life of the King, and 35 in all other treasons.

Challenges for cause are either to the whole panel (jury list) or to the polls—*i.e.*, to particular jurors; and are also

either principal challenges—*i.e.*, where some manifest partiality exists, or challenges for favour—*i.e.*, where there is reasonable ground for suspecting partiality. Challenges to the array must be in writing, and are decided by the court on demurrer, or, if pleaded to, by two triers. Challenges to the polls are *propter affectum*, where there is partiality—*e.g.*, relationship of a juror; *propter defectum*, for want of the requisite qualification; *propter delictum*, where a juror has been convicted of treason, felony, or perjury; or *propter honoris respectum*, where a peer is called to serve. Challenges to the polls are made orally; and if they are challenges for favour are settled by two triers, but principal challenges are decided by the court.

After the jury are sworn, the case is opened by the counsel for the prosecution, and witnesses are called for the prosecution. Sometimes additional evidence has been obtained for the prosecution after the accused was committed for trial; and where this is the case, it is a rule of practice that the prosecution should give notice of the intention to call such witnesses, and a copy of the evidence they will give, both to the accused and to the clerk of the court which is to try the case. After the case for the prosecution is closed, it is ascertained whether the defence intend calling witnesses (other than witnesses as to character or the accused). If they do not, or if the accused is the only witness for the defence, as soon as he has given his evidence, counsel for the prosecution addresses the jury a second time, in support of his case and to sum up the evidence against the prisoner; and counsel for the defence addresses the jury last. If the prisoner calls witnesses (other than himself) on the merits, his counsel opens his case, and calls the witnesses in support of it, and sums up the evidence. Counsel for the prosecution then has a right of reply. The judge sums up the whole case to the jury. Verdict is found by the jury. The prisoner is asked if he has anything to say against sentence, which

is then pronounced. If the Attorney General or Solicitor General is prosecuting officially, he personally has the official privilege of addressing the jury last even though the accused calls no evidence (5 St. Tr. (N. S.), 3 *n*).

(*d*) Evidence.

The attendance of witnesses at the trial of an indictment is procured thus: Witnesses who appear before the justices in the police court are bound over by them in recognizances to appear at the hearing, and unless they appear the recognizances are estreated; or if the witnesses refuse to be so bound, they may be committed to prison for safe custody until the hearing. Other witnesses are served with a Crown Office subpœna. A witness in *civil* custody is procured by writ of *habeas corpus ad testificandum;* if in *criminal* custody, then by writ of *habeas corpus*, or by warrant from a King's Bench judge or Secretary of State to the gaoler to bring him up to be examined under sec. 9 of the Criminal Procedure Act 1853, or by written order of a Secretary of State under the Prisons Act 1898, sec. 11.

Certain persons are incompetent to give evidence. A child of tender years, unless the court is satisfied that it understands the duty of speaking the truth. A felon under sentence of death. Idiots and lunatics, for they lack understanding. The solicitor and counsel of the accused cannot give evidence as to knowledge acquired in that capacity, unless their client waives his privilege, or consulted them to obtain information which would enable him to commit the crime (R. v. Cox (1885), 54 L. J., M. C., 41).

The accused can be called as a witness for the prosecution under the Evidence Act 1877, on indictments for non-repair of a highway or bridge, or for nuisance to a highway or bridge or river, or for trying a civil right only.

The consort of the accused can—by the Criminal Evidence Act 1898—be called as a witness for the prosecution in some cases. These are treason (doubtful); under the Vagrancy Act 1824; rape, indecent assault, abduction, and child stealing; under the Evidence Act 1877, *supra*; if he (or she) is prosecuting the accused for personal injury; under the Married Women's Property Acts 1882 and 1884, if he (or she) is prosecuting the accused for a crime to property committed while they were living apart or at the moment of desertion; under the Criminal Law Amendment Act 1885; under the Children Act 1908; and under the Punishment of Incest Act 1908. But except in cases under the Evidence Act 1877, or when prosecuting the other for personal injury, it does not seem that the consort is a compellable witness for the prosecution (compare R. v. Ellis (1899), 34 L. J., 646, with R. v. Brazil (1899), 63 J. P., 138).

By the Criminal Evidence Act 1898, the accused—and the accused's wife (or husband)—is now a competent witness for the defence, at every stage except before the grand jury; but can only be called on request of the accused, and the prosecution may not comment (though the judge can) on the omission to call them, and of course neither wife nor husband can be compelled to disclose any communication from the other during the marriage. If the accused is a witness, he may be cross-examined as to the offence charged. If the accused is a witness, he cannot be asked about his other offences or his previous convictions or his bad character—unless (1) proof of other offences is admissible to show guilt on the present charge, *e.g.*, receiving stolen goods, or (2) he has cross-examined the prosecutor's witnesses to show his good character, or has tendered evidence of good character, or his defence involves imputations on the character of the prosecutor or his witnesses, or (3) he has given evidence against another person charged with the same crime. The accused gives his evidence from the witness box; and if he is

the only witness to the facts called for the defence, he gives evidence directly after the last witness for the prosecution, and then the prosecution sum up the evidence and are followed by the defence, which thus gets the last word with the jury. If two persons are jointly indicted and each gives evidence exculpating himself and incriminating the other, each may be cross-examined by the other as well as by the prosecutor (R. v. Hadwen (1902), 71 L. J., K. B., 581).

At a criminal trial the accused may tender evidence of his *general* good character; but the prosecution cannot give evidence of his bad character, except where his character is in issue or to rebut evidence of good character (R. v. Rowton (1865), 34 L. J., M. C., 57) or under the Criminal Evidence Act 1898, *supra*. Evidence of good character cannot alter the facts proved; but in cases of doubt it may induce an acquittal, and in a clearly proved case it may possibly mitigate punishment.

A confession made by a prisoner can only be used as evidence against him if the prosecution prove that it was purely voluntary (R. v. Thompson (1893), 62 L. J., M. C., 93). So that if the confession were made because of any inducement of a temporal nature having reference to the charge, and held out by a person in authority, it is not admissible, *e.g.*, if the prosecutor or constable said to the accused, "You had better tell the truth" (R. v. Fennell (1881), 50 L. J., M. C., 126), or words to that effect (R. v. Rose (1898), 67 L. J., Q. B., 289); but facts discovered by the help of such inadmissible confession can be proved (R. v. Warwickshell (1770), 1 Leech, 263).

Evidence is not usually received for the prosecution showing that the accused has previously committed offences similar to that for which he is being tried. But such evidence may be given—(1) in treason, if it tends to directly prove an overt act laid in the indictment; (2) in conspiracy, sedition and libel, as the offence can only be estimated by the surrounding circumstances; (3) to prove guilty knowledge,

e.g., on a charge of uttering forged notes, or bad coin, or false pretences; (4) under the Prevention of Crimes Act 1871, on a charge of receiving stolen goods; or (5) to prove malice or intent, *e.g.*, on a charge of murder to satisfy the jury that the death was not accidental (Makin v. Attorney General (1894), 69 L. T., 278).

If two or more prisoners are put upon their trial, the prosecution may call either of those prisoners as a witness—if he has pleaded guilty (R. v. Hinks (1845), 1 Den., 84); or if the prosecution, with the leave of the court, consent to his being acquitted; or if the court has ordered separate trials. In each of these cases, he could be called as a witness for the other prisoner. But his evidence is looked on with some suspicion, and, in practice, though not in strict law (R. v. Stubbs (1855), *infra*), there must be some material corroboration.

Where an accomplice is examined as a witness in a criminal case, there is a rule of general and usual practice which requires such evidence to be corroborated. If a jury choose to convict on such evidence without corroboration, the conviction cannot be quashed as bad in law; but the practice is for the judge to advise an acquittal (R. v. Everest (1909), 73 J. P., 260), unless there is other evidence both as to identity and as to the facts (R. v. Stubbs, 25 L. J., M. C., 16). The evidence of a police spy is not to be treated as that of an accomplice (R. v. Buckley (1909), 73 J. P., 230).

A dying declaration can be given in evidence only in cases of homicide, where the death of the declarant is the subject of the charge, and the circumstances of the death are the subject of the declaration (R. v. Hind (1860), Bell, 253). The declarant must have been a person capable of giving evidence, and the declaration must have been such as he could have given in evidence, and be complete in itself. That the declarant was in actual danger of death, that

he had a settled expectation he could not get better (R. v. Gloster (1888), 16 Cox, 471), and that death has ensued, must all be proved to the satisfaction of the judge (Taylor on Evidence, 626). No oath or writing, or presence of a justice or constable, is required. The student should carefully contrast the rule admitting hearsay evidence in the shape of a dying declaration with the statutory rules for perpetuating the testimony of a sick witness set out *ante*, on page 151.

The evidence of one witness is enough for a conviction (if believed); except in treason and perjury, for which there must be two witnesses, and under the Criminal Law Amendment Act 1885, and the Children Act 1908, where the unsworn evidence of a child of tender years must be corroborated. But where the evidence is circumstantial, the jury must satisfy themselves (1) that the facts sworn to are satisfactorily proved, and (2) that the circumstantial evidence is not only consistent with the accused having committed the crime, but is inconsistent with any other rational conclusion (R. v. Hodge (1838), 2 Lew., 227).

(*e*) Verdict. New Trial. Appeal.

Verdicts are (1) general, *i.e.*, Guilty or Not guilty; (2) partial, *i.e.*, Guilty on one count and Not guilty on the others; or (3) special, *i.e.*, where the jury find a series of specific facts, and leave it to the court to decide if those facts constitute in law the offence charged. For an example of a special verdict, see R. v. Dudley (1885), 54 L. J., M. C., 32. If the jury cannot agree, the judge must discharge them, and the accused is then tried before a fresh jury. If the judge or a juror dies, or is taken ill, or for any reason the trial cannot go on (*e.g.*, fire or riot), a trial takes place before a fresh jury on a writ of *venire de novo*.

In some cases a person indicted for one offence may be convicted of another:

(1) If indicted for felony or misdemeanour, he may be convicted of an *attempt* to commit the same offence (Criminal Procedure Act 1851, sec. 9).

(2) If indicted for misdemeanour and the facts show felony, the court may either direct a conviction for the misdemeanour or discharge the jury and direct a trial for the felony (*Ibid.*, sec. 12).

(3) If indicted for robbery, he may be convicted of assault with intent to rob (Larceny Act 1861, sec. 91).

(4) If indicted for larceny, he may be convicted of embezzlement, and *vice versâ* (*Ibid.*, sec. 72).

(5) If indicted for false pretences and the facts show larceny, he may be convicted of false pretences (*Ibid.*, sec. 88).

(6) If indicted for a serious offence, he may be convicted of a smaller offence of the same class involved in it, *e.g.*, on a charge of robbery, he may be convicted of larceny; or of burglary and larceny, of larceny; or of murder, he may be convicted of murder or manslaughter.

A motion in arrest of judgment is an oral application made to the court, during the interval between the verdict of guilty and the passing of the sentence, to abstain from passing judgment. It must be grounded on some substantial defect in the indictment which has not been cured by the verdict (R. v. Stroulger (1886), 55 L. T., 122). If the motion succeeds, all the proceedings are set aside, but the accused may be indicted again on the same facts.

If a female is convicted of a crime punishable with death, and alleges she is pregnant, a jury of 12 matrons is sworn, and if after inspection the verdict is that she be quick with child, the court respites sentence until after pregnancy is over.

Judgment is given orally in court, and in cases of treason and felony the prisoner must be present.

A reprieve—*i.e.*, a suspension of the sentence for a time—may take place at the pleasure of the Crown stated to the court, or at the discretion of the judge, or in the case of pregnancy, *supra*, or if the prisoner becomes insane after conviction.

A new trial could formerly have been applied for after conviction for misdemeanour; but this right is taken away by the Criminal Appeal Act 1907, sec. 20, which also abolishes writs of error.

The only appeals in criminal cases from a court of record are—(1) To the Court of Criminal Appeal, and (2) Application to the Home Secretary for pardon or commutation of sentence.

By the Criminal Appeal Act 1907, any person convicted upon indictment, or criminal information, or coroner's inquisition, or sentenced as an incorrigible rogue at quarter sessions—other than a peer or peeress, who cannot be lawfully tried at assizes—may appeal to the Court of Criminal Appeal (*ante*, page 139):

(*a*) On a question of law only—without leave;

(*b*) On a question of fact, or mixed law and fact, or on any other ground which the court thinks sufficient—with leave of the court which tried him, or of the Court of Criminal Appeal; and

(*c*) Against the sentence, unless it is one fixed by law—with leave of the Criminal Appeal Court only.

The appellant sends a signed notice of appeal by registered letter to the Registrar of the Court of Criminal Appeal within ten days after the conviction; and if such notice is given, a sentence of death or corporal punishment is not to be carried out until the appeal is disposed of.

An appeal against conviction must be allowed if the verdict was unreasonable, or would not be supported by the

evidence, or if the judgment ought to be set aside for a wrong decision on any question of law, or if on any ground there was a miscarriage of justice; and in any other case must be dismissed. But in any case the appeal may be dismissed if no substantial miscarriage of justice has taken place (R. v. Armitage (1910), 74 J. P., 48). If the appeal is allowed, a judgment and verdict of acquittal are to be entered.

On appeal against sentence, the Criminal Appeal Court may substitute any other sentence warranted in law by the verdict (either more or less severe) for the one passed at the trial, and otherwise must dismiss the appeal.

If the appellant was not properly convicted on some count or part of the indictment, but was properly convicted on some other count or part, the sentence may be affirmed or a different one passed. If the appellant was found guilty of an offence, and could on the indictment have been found guilty of some other offence, and the finding shows the jury must have been satisfied of his guilt on that other offence, the court may enter a verdict of guilty of that other offence (*e.g.*, manslaughter instead of murder), and substitute sentence for it in the place of (but not more severe than) the sentence passed at the trial. If the jury found a special verdict, the Appeal Court may order such conclusion to be recorded thereupon as is required by law and pass such sentence thereon as the law warrants. If the Appeal Court thinks the appellant was guilty but insane, it may quash the sentence passed at the trial and order him to be detained as a criminal lunatic.

Any order for restitution of property to any person made on conviction, and the revesting of the property in stolen goods on conviction, under sec. 24 (1) of the Sale of Goods Act 1893, is suspended (unless otherwise directed, because the title is not in dispute) for ten days after the conviction and during any appeal from conviction, and has no effect if the appeal succeeds.

Any order made at the trial for the restitution of any property to any person may be annulled or varied by the Appeal Court although the conviction is not quashed, sec. 6 (2); but before this is done, the person for or against whom the order was made is entitled to be heard before the Appeal Court (Rule 9).

If the convicting court makes an order for payment of the costs of prosecution out of moneys taken from the prisoner on arrest or otherwise, or lawfully orders a reward for apprehending the prisoner, or compensation under sec. 30 of the Criminal Law Amendment Act 1826 to relatives of any one killed in arresting a felon, or orders money taken from the prisoner to be paid as compensation to an innocent buyer of stolen goods under sec. 9 of the Criminal Law Amendment Act 1867, or makes any order for costs against the prisoner under the Costs in Criminal Cases Act 1908—such order is suspended for 10 days and during any appeal from the conviction, and may be annulled or varied by the Appeal Court (Rule 11).

Any disqualification, forfeiture, or disability caused by the conviction is suspended for 10 days after the verdict and during any appeal; except the disabilities of suing, or alienating, or contracting, imposed by sec. 8 of the Forfeiture Act 1870 (Rule 11). Also any destruction or forfeiture of property on conviction arising under any statute is similarly suspended (*Ibid.*).

Upon any appeal, the judge must furnish the registrar with his notes of the trial and with a report giving his opinion on the case (sec. 8). The Appeal Court can order the production of documents and can take evidence not given at the trial (sec. 9), and can assign solicitor and counsel to appellant if he is poor and justice requires it (sec. 10).

The appellant has a right to be present at the hearing of any appeal, unless it be on a point of law only (sec. 11; R. v. Dunleavey (1909), 78 L. J., K. B., 359).

The director of public prosecutions must appear for the Crown on every appeal, unless a private prosecutor undertakes to do so (sec. 12). No costs can be allowed to either side on any appeal (sec. 13). The appellant can be let out on bail (sec. 14). A shorthand note must be taken of every trial from which appeal lies under the Act, and either side can have a transcript (sec. 16).

Any petition to the Home Secretary for pardon or commutation of sentence can (except against a sentence of death) be sent by him for trial as an appeal under the Act (sec. 19).

IV.—PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

The jurisdiction of justices of the peace is derived entirely from the Commission of the Peace by which they are appointed and from statute law. It may be classed under three distinct heads—(*a*) Summary jurisdiction, which enables them (1) upon information, *without a jury* to try and to convict and punish offenders for crime, and (2) upon complaint, to exercise a civil jurisdiction to make orders for payment of money or otherwise; (*b*) jurisdiction to hold enquiries as to indictable crimes and commit the accused for trial at quarter sessions or assizes—regulated by the Indictable Offences Act 1848 and dealt with *ante*, on pages 143 to 154; and (*c*) miscellaneous jurisdiction, exercised in special sessions under various statutes, *e.g.*, bastardy, ejecting tenants under 1 & 2 Vict., c. 74, enforcing payment of poor and other rates, appeals against poor rates, the grant, transfer, and renewal of licences for selling intoxicating liquors or for billiards, etc.

Neither a county justice nor a borough justice need have any property qualification, but he must live or carry on business in the county or borough, or within seven miles therefrom. A stipendiary magistrate is a barrister of seven years' standing, and may be appointed for the metropolitan police district, or under some local statute, or for a municipal borough, or for any urban district with over 25,000 inhabitants; he is paid for his services, and when sitting in court has the same power as two justices. Certain officials—*e.g.*, mayors, ex-mayors, and chairmen of county or urban or rural district councils—are *ex officio* justices of the peace.

Actions against justices are regulated by the Justices Protection Act 1848 and the Public Authorities Protection

Act 1893. In all cases the action must be brought within six months after the matter complained of, and the conviction or order of the justices must have been quashed; and if it was a matter within the jurisdiction of the justice, it must be shown that he acted maliciously in fact and without reasonable and probable cause.

Summary Jurisdiction.

This is a power conferred on justices of the peace by statute to exercise criminal jurisdiction by disposing on information of certain offences without the intervention of a jury, and to exercise civil jurisdiction by making orders on complaint for payment of money. As a rule the jurisdiction is confined to matters occurring within the county, borough, or district for which the justice is appointed, or within 500 yards outside the boundary thereof, or upon a vehicle or vessel whilst on a journey which passes through his jurisdiction (Summary Jurisdiction Act 1879, sec. 46).

The exercise of this summary jurisdiction is controlled in four ways: (1) By the Summary Jurisdiction Acts 1848, 1879, 1884, and 1899, which govern all cases except bastardy, and orders for removal of paupers, and orders as to lunatics. By the 1879 Act, sec. 20, no case can be tried by a court of summary jurisdiction except when sitting in open court, in a petty sessional court house (*i.e.*, the building where the justices usually sit—*e.g.*, a town hall), or an occasional court house (*i.e.*, some building which, by a resolution of the justices of a county, can be used as a court house when required—*e.g.*, a police station). A court of summary jurisdiction sitting in an occasional court house, or one justice in a petty sessional court house, cannot give more than 14 days' imprisonment or 20s. fine. All cases arising under the Act of 1879, or any Act passed after 1879, must be tried before two

justices unless the later Act says otherwise. (2) By the special regulations in the Act of Parliament which confers jurisdiction over the particular case. (3) An appeal lies to quarter sessions, in cases where some statute allows it. (4) The King's Bench can issue a *mandamus* (or an order under sec. 5 of the Justices Protection Act 1848) to compel justices to do their duty; or a *certiorari* to transfer the proceedings, if there has been excess of jurisdiction or manifest informality; or a *prohibition* to stay excess of jurisdiction (a remedy very seldom employed); or a *habeas corpus* in cases of alleged illegal imprisonment; or can decide any point of law, on a *special case* stated by the justices.

A person brought before justices to be dealt with summarily must, if charged with any offence (except assault) for which on summary conviction he is liable to more than 3 months' imprisonment, be informed that he has a right to be tried by a jury, before the charge is gone into; and if he claims the right, the charge is treated as an indictable offence (S. J. Act 1879, sec. 17).

A petty sessional court consists of two justices at least, or one police or stipendiary magistrate, or a Lord Mayor or alderman in the City of London, sitting in the place where special or petty sessions are usually held. It has a limited power to try indictable offences under the Summary Jurisdiction Acts 1879 and 1899, on a day publicly appointed. One justice sitting alone, either in a borough or a county, or several justices sitting in an occasional court house in a county, do not constitute a petty sessional court and cannot fine more than 20s. including costs, or imprison more than 14 days (S. J. Act 1879, sec. 20).

As to a juvenile court, see *ante*, page 41.

Summary proceedings are commenced by information or complaint; and we may take it that the procedure is identical in both cases, except on the points set out in the next three paragraphs.

An *information* is laid when summary proceedings are taken for a crime, and its object is to obtain a *conviction*. A *complaint* is made in cases in which justices are by statute empowered to make an *order* for payment of money or otherwise. The information need not be in writing (R. v. Millard, 22 L. J., M. C., 108), but in practice it invariably is, and the Rules provide a form for it; a complaint need not be in writing, unless the statute under which it is laid prescribes writing (S. J. Act 1848, sec. 8). A summons or warrant can be issued on the information; but on the complaint, a summons only (S. J. Act 1879, sec. 35). On the information, a conviction takes place followed by fine or imprisonment; on the complaint, an order for payment is made.

When a penalty under a conviction is imposed, and is not paid, the consequences are as follows: If the statute under which the fine is imposed says it shall be levied by distress or does not say how it is to be enforced, the justices may issue a distress warrant for it—unless the justices are satisfied that the convicted person has no goods or insufficient goods or that a distress will be more injurious to him or his family than imprisonment, in which case imprisonment may be ordered forthwith (S. J. Acts 1848, sec. 19; 1879, sec. 21). If the statute says the fine is to be levied by distress, but does not say what is to happen if there is no distress or insufficient distress, the justices may imprison (1848 Act, sec. 22). If the statute orders imprisonment on nonpayment of a fine and does not authorize distress, imprisonment is the only remedy (1848 Act, sec. 23). A distress is levied by a constable; the goods are to be sold by public auction not less than 5 nor more than 14 days after seizure, and are not to be removed from the house until sale; wearing apparel and bedding and £5 worth of tools cannot be seized. The imprisonment (in default of payment or of distress) is not to exceed—7 days if the sum adjudged to be paid (including

costs) is not over 10s.; 14 days, if not over £1; 1 month, if not over £5; 2 months, if not over £20; and 3 months, if over £20 (S. J. Act 1879, secs. 5, 21, 43). Such imprisonment must be without hard labour, unless the Act under which the conviction takes place says otherwise (1879 Act, sec. 5).

An order for payment of a civil debt is enforced by distress; and in default of sufficient distress, it may be enforced by imprisonment for 6 weeks under the Debtors Act 1869, but only on proof of means to pay, after service of a judgment summons two clear days before the hearing (S. J. Act 1879, sec. 25; Rules of 1886).

Both as regards a fine due under a conviction and an order to pay a civil debt made on complaint, the justices may allow time for payment, and direct payment by instalments, and order security for payment (S. J. Act, 1879, sec. 7).

The mode of proceeding on a criminal charge falling within the summary jurisdiction of justices is as follows:—

An information or complaint is laid before a justice (unless the Act under which proceedings was taken fixes some other time) within six months after the thing complained of, and a summons or warrant issued (S. J. Act 1848, sec. 11).

The information must be for one offence only, or one matter of complaint only. If two offences are charged, the justices ought to amend by striking out one and then hear the case as to the other (Rogers v. Richards (1892), 1 Q. B. 555); and unless they do this, any conviction will be quashed (Hamilton v. Walker (1892), 2 Q. B., 25). Several offenders may, however, be joined in the same information and convicted in separate penalties, *e.g.*, for assault, damage, etc. (S. J. Act 1848, sec. 10). The information must state the name and occupation of the accused, and the offence alleged, and when and where it was committed (S. J. Act 1848, sec. 9). No objection is allowed to either information, complaint, summons, or warrant for any alleged

defect therein in substance or in form, or for any variance between it and the evidence on the part of the informant; but if the justices think such variance has misled or deceived the party charged, they may adjourn the hearing to some future day (S. J. Act 1848, secs. 1, 3, 9; S. J. Act 1879, sec. 39).

The summons is served by the constable or other person to whom it is delivered, either by giving it to the party to whom it is addressed personally or by leaving the same with some person for him at his last or most usual place of abode. It must be served a reasonable time before the hearing, and the justices decide what is reasonable (S. J. Act 1848, sec. 1). In some cases, a special statute prescribes a special mode of service and a special time before the hearing, *e.g.*, 14 days under the Sale of Food and Drugs Acts. The summons can be served outside the jurisdiction of the justice who granted it, without being backed—in which it differs from a warrant (S. J. Act 1848, sec. 3). In summary jurisdiction cases, a warrant may not be executed on a Sunday, except for treason or felony or breach of the peace (29 Car. II., c. 7, sec. 6).

If a person served with a summons for a criminal offence does not appear at the time and place specified, the justices may—on the matter of the information being substantiated to their satisfaction by oath or affirmation, and on proof (by direct evidence on oath or by a solemn declaration taken before a justice or commissioner for oaths) of service of the summons—issue a warrant to apprehend the accused. Or they may, if they think fit, issue their warrant in the first place on the charge being put into writing and substantiated by oath or affirmation (S. J. Acts 1848, sec. 1; 1879, sec. 41).

The hearing must be in open court (S. J. Act 1879, sec. 20). At the hearing, if the complainant does not appear, but the defendant does, the justices may dismiss the case with costs or adjourn the hearing. If the defendant does not appear, either in person or by solicitor or counsel (R. v. Brentford (1910), 74 J. P., 110), the justices—on

proof of service of the summons—may proceed to hear the case in his absence, or may adjourn the hearing until he is apprehended on a warrant. If both parties appear (in person, or by solicitor or counsel), the justices must proceed to hear the case (S. J. Act 1848, sec. 13). The hearing must be before two or more justices (unless the statute giving jurisdiction expressly confers it on one justice), and in open court. A justice is disqualified from taking part in the hearing—(1) if he has any personal interest or actual bias in the matter to be litigated (R. v. Huggins, 72 L. T., 193; R. v. Cork (1910), 2 Irish R., 271), or (2) if some statute imposes a disqualification. If a disqualified justice takes part, the decision may be upset, and the justice is in some cases liable to a penalty (*e.g.*, £100 under the Licensing (Consolidation) Act 1910, sec. 40). The attendance of witnesses is secured by summons or warrant (S. J. Acts 1848, sec. 7; 1879, sec. 36); but for production of documents, a Crown Office subpœna is necessary. A justice may issue a witness summons to any witness in his jurisdiction; and if the witness does not attend, a warrant can be issued on proof of service of the summons and tender of conduct money (S. J. Act 1848, sec. 7). But a summons to a witness who is out of the jurisdiction of the justice issuing it, requires to be backed (S. J. Act 1879, sec. 36). On oath that a witness will probably not attend unless compelled, a warrant can be issued in the first instance (1848 Act, sec. 7). If a witness who attends on summons or warrant refuses to be sworn or to answer questions, he can be committed to prison for 7 days (S. J. Act 1848, sec. 7); but this power does not apply to a witness who attends voluntarily and refuses to answer questions (R. v. Flavell (1884), 14 Q. B. D., 364). The justices can adjourn the hearing to a fixed time and place at their discretion (1848 Act, sec. 16), or if not a petty sessional court can adjourn it to such a court (1879 Act, sec. 20). *The informant* (if not represented by solicitor or

counsel) has a right to *personally* address the court and examine and cross-examine witnesses (Duncan v. Toms (1887), 56 L. T., 719); but this does not allow a superintendent of police to act as advocate, unless he personally laid the information. Either side can be represented by counsel or solicitor; the substance of the complaint is read to the defendant; the prosecution can address the court; then evidence is taken on oath for the prosecution; then the defendant can address the court; then comes evidence for the defence; and finally evidence in reply, if any evidence is given for the defence except as to general character. The prosecution cannot comment on the evidence for the defence, nor the defence upon the evidence given in reply (S. J. Act 1848, sec. 14). The justices then convict or dismiss. The decision is by the vote of the majority; but if the votes are equal, the case must be dismissed or adjourned for rehearing, as the chairman in petty sessions has no casting vote (R. v. Ashplant (1888), 52 J. P., 474). If the case is dismissed, the justices may give a certificate of the result, which bars further criminal proceedings for the same offence (S. J. Act 1848, sec. 14). The order of dismissal may award the defendant such costs as the justices deem reasonable, and the amount must be stated in the order; payment is enforced by distress or not more than 1 month's hard labour (S. J. Act 1848, secs. 18, 26). If the offence is not assault, and on summary conviction the sentence may be more than 3 months' hard labour, the accused must be informed of his right to be tried by a jury before the charge is gone into (S. J. Act 1879, sec. 17).

If justices think the offence is proved but that—having regard to the character, antecedents, age, health, or mental condition of the accused, or the trivial nature of the offence, or the extenuating circumstances — punishment is not expedient, they may either (1) dismiss the information, or (2) may discharge the accused on security to be of good

behaviour and to come up for conviction and sentence within a specified time not exceeding 3 years; and in either case, may also order payment of damages or compensation up to £10 and costs (Probation of Offenders Act 1907).

If a statute authorizes justices to imprison on summary conviction but does not give the option of a fine, the justices instead of imprisoment may now impose a fine not exceeding £25 (S. J. Act 1879, sec. 4).

A child between 7 and 14 can never be fined more than 40s. on summary conviction (1879 Act, sec. 15). A child or young person tried by any court for any crime can now only be dealt with in the ways set out in the Children Act 1908, *ante*, pages 42, 43.

If justices impose a fine of not more than 5s., then the defendant is not liable for the informant's costs unless the justices make a special order; but all fees paid by the informant are returned, and the justices may order the fine to go towards the informant's costs (S. J. Act 1879, sec. 8).

A case before justices must be sent for trial and not summarily disposed of—if the evidence raises a *primâ facie* case against the accused with regard to an indictable offence, and the justices have no power to dispose of the charge summarily or decline to exercise that power; or if the justices can only deal with the case summarily by consent of the accused, and he refuses consent; or under the S. J. Act 1879, sec. 17, if the punishment on summary conviction could be more than 3 months, and the accused demands to be sent for trial, and the charge is not assault.

Summary Jurisdiction over Indictable Crimes.

Wide powers are conferred on justices to deal summarily with (1) a child, (2) a young person, (3) an adult, under the Summary Jurisdiction Acts 1879 and 1899 for indictable

crimes. The powers depend on consent, and (for that very reason) there is no appeal.

The powers are conferred on a petty sessional court (*ante*, page 179) only, and must be exercised on a day of which public notice has been given (1879 Act, sec. 20). There is the same power of remand as in indictable cases (*ante*, page 150) except that if the remand is to the next practicable sitting of a petty sessional court it may be for more than 8 days (1879 Act, sec. 24).

A child (over 7 and under 14) may be dealt with summarily for any indictable crime except homicide, provided the parent or other custodian of the child does not object. The justices cannot sentence to penal servitude, or imprison, or fine beyond 40s.; but may exempt from punishment under the Probation of Offenders Act 1907 (*ante*, page 45), or may send the child to a reformatory or industrial school (*ante*, page 36). They can sentence a male child to be whipped privately by a constable with 6 strokes of a birch rod, in addition to or instead of other punishment (1879 Act, secs. 10, 15; Children Act 1908, sec. 102).

A young person (apparently over 14 but under 16) may be dealt with summarily, if he (or she) consents and is charged with any indictable crime except homicide. The justices may fine up to £10, or imprison with or without hard labour up to 3 months (1879 Act, sec. 11; 1899 Act, sec. 2; Children Act 1908, secs. 134, 102).

An adult over 16 can only be dealt with summarily, if there is no previous conviction upon an indictment against him. If he consents, and is charged with larceny, embezzlement, receiving stolen goods, false pretences, or firing woods or gorse or heath, to a value not exceeding 40s., or is charged with an attempt to commit one of those five crimes to any value, or is charged with indecent assault, he may be tried summarily and sentenced to 3 months' imprisonment (or for indecent assault to 6 months) or £20 fine. If he is

charged with one of the five crimes just before named and the value of the property exceeds 40s., and he pleads guilty, he may be sent to prison for 6 months (1879 Act, secs. 12, 13, 14; 1899 Act). There is no appeal from a conviction under these provisions, as the jurisdiction depends on consent (R. v. Justices of London (1892), 66 L. T., 678).

Appeal from Summary Jurisdiction.

(1) *Appeal to Quarter Sessions.*—This only lies where some statute expressly gives the right. Thus, it lies on a conviction under the Larceny Act or Malicious Damage Act, if the fine exceeds £5, or imprisonment exceeds 1 month, or the conviction is before one justice only. An appeal lies if a metropolitan police magistrate fines over £3 (exclusive of costs) or imprisons over 1 month (2 & 3 Vict., c. 71, sec. 53). Also, by the Summary Jurisdiction Act 1879, it lies in all cases of imprisonment without the option of a fine—except where the prisoner has pleaded guilty, or is imprisoned in default of paying money or finding sureties or entering into recognizances, or is summarily convicted under that Act (R. v. London (1892), 66 L. T., 678). The appeal is to the next practicable court of quarter sessions, held not less than 15 days after the decision. The appellant *must* give a signed notice (which may be sent by registered letter) to the other side and to the justices' clerk within seven days after the decision, stating generally the grounds of appeal; and must within three days after such notice attend before any court of summary jurisdiction (R. v. Durham (1895), 72 L. T., 465) and give security (by deposit or recognizances) to prosecute the appeal and abide the result and pay costs if ordered; the appellant may then be released pending the appeal. Fresh evidence may be given on the appeal. The quarter sessions may state a special case on a point of law for the King's Bench on security being given in £50.

(2) *Appeal by Special Case.*—Any person aggrieved, who alleges that any conviction, order, determination, or other proceeding of a court of summary jurisdiction is erroneous in law or is in excess of jurisdiction, may make a written application (South Staffordshire Waterworks v. Stone (1887), 57 L. T., 368) to the justices to state a special case for the decision of a divisional court. This application must be left with the clerk to the justices within seven clear days (R. v. Knill (1893), 57 J. P., 277) from the date of the proceeding to be questioned together with a copy thereof for each of the justices who constituted the court, which copies must be duly forwarded by such clerk to each of such justices (Rule of 20th March, 1906). The appellant must enter into recognizances to prosecute the appeal and pay costs and come up for judgment, unless the appeal succeeds. If the justices grant a case, they must state it within three calendar months after the date of the application, and after the recognizance has been entered into, and hand it to the appellant. Within three days after the special case is handed to the appellant, he must serve a written notice of the appeal and a copy of the case on the respondent (service on his solicitor is not enough, Foss v. Bert (1906), 2 K. B., 105; Rust v. Botolph (1906), 94 L. T., 575), and *then* lodge the case at the Crown Office (Aspinall v. Sutton (1894), 63 L. J., M. C., 205). The decision on such special case is final, and the court may reverse, affirm or amend the decision of the justices, or may remit the matter back with their opinion how justices must deal with it (R. v. Corser (1892), 8 T. L. R., 563), or make such other order as it sees fit, and deal with costs; but the justices who state the case cannot be condemned in costs, unless they appear by counsel at the hearing (Smith v. Butler (1886), 16 Q. B. D., 349). If the justices refuse to state a case, application may be made to the High Court for a mandamus (S. J. Act 1879, sec. 33).

Also a special case may be applied for alternatively under

the Summary Jurisdiction Act 1857 (20 & 21 Vict., c. 43, sec. 2) by either party who alleges the decision of justices on any information or complaint is erroneous in law, subject to the same rules (Stokes v. Mitcheson (1902), 1 K. B., 857).

(3) *Certiorari.*—Application may be made to a divisional court, or a judge in chambers, for a writ of *certiorari* to remove the decision of a court of summary jurisdiction into the King's Bench, for the purpose of getting it quashed for some excess of jurisdiction or error in law, *e.g.*, if justices have convicted upon an information that was not laid within the proper time.

Miscellaneous Jurisdiction.

Bastardy Orders.—These are governed by the Bastardy Acts 1845, 1872 and 1873, and secs. 4 to 8 of the Poor Law Act 1844. Any single woman (which includes a widow and a wife living apart from her husband) who wants to get an affiliation order can make an application to a justice of the peace for the district in which she resides to issue a summons against the putative father of her illegitimate child. She may apply—(1) before the birth, if she deposes on oath who is the father; or (2) within 12 months after the birth; or (3) if she proves on oath that the alleged father ceased to reside in England within 12 months after the birth, then within 12 months after his return to England; or (4) if she proves that the alleged father has within 12 months after the birth paid money for the child's maintenance, then at any subsequent period. The summons must be served on the alleged father personally or left for him with some person at his last usual place of abode, at least six clear days before the hearing; and it cannot be served out of England. If issued before the birth, the summons is not heard until after, and the order may be made within two months after the birth. If issued after birth, the hearing must begin within 40 days

after service of the summons, but can be then adjourned. The child must have been born in England or on an English ship, or the man must be in England and the birth in Scotland. The mother is an essential witness, so that if she dies before the hearing no order can be made (R. v. Armitage (1872), 42 L. J., M. C., 15). If the mother's evidence is corroborated in some material particular by other evidence to the satisfaction of the justices, they may adjudge the man to be the putative father of the child, and (if they see fit, having regard to all the circumstances) may order him to pay to the mother, or guardian of the child, a weekly sum, not exceeding 5s. a week, for its "maintenance and education," until the child attains 13 (or, if the justices so direct, 16), or the earlier death of either the child or the father, and the expenses of the birth, and the costs. The man is a competent witness on his own behalf, and can be compelled to attend as a witness for the mother (R. v. Berry (1859), 23 J. P., 82). If the case is dismissed (except on its merits) the mother may take out a fresh summons (49 L. J.; M. C., 67). If an order is made, the man can appeal to quarter sessions, which may affirm or reverse the order or reduce the payments. The payment of money due under the order is enforced by the mother attending before any justice after one calendar month from the date of the order, and proving on oath that the order was served on the man (either personally or by being left at his last or most usual place of abode), and that arrears are due under it, whereupon the justice issues a warrant under which the man is arrested and brought before two justices. If the man does not then pay, a distress warrant can be issued (the man either being kept in custody or let out on bail); and, in default of distress, the man may be imprisoned for not more than 3 months. The levying of the distress, and the scale of imprisonment for non-payment, are regulated by the S. J. Act 1879, sec. 54 (*ante*, page 180). If the child becomes chargeable in fact to the parish, then the guardians

may apply to two justices for an order that payments under a bastardy order already obtained may be made to their officer (renewable every year), or for a bastardy order in their favour to be made against the putative father.

Employers and Workmen Act 1875.—This Act gives justices civil jurisdiction to determine disputes beween an employer and *workman*. But the workman must not be a domestic or menial servant, and must be a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour. A bus conductor, tramdriver, haircutter, telegraph clerk, railway guard, grocer's assistant, or publican's potman is not within the Act. The claim must not exceed £10. A complaint is lodged, and a summons issued and served four clear days before hearing. The justices may rescind any contract and order payment of wages or damages. Any sum ordered to be paid can be enforced by distress, or, on proof of means to pay, by imprisonment under the Debtors Act 1869, sec. 5.

The same Act gives jurisdiction to decide disputes between an employer and an apprentice to the business of a *workman* at a premium of not more than £25, or an apprentice under the Poor Law Acts, or an apprentice to the sea service. The justices may cancel the apprenticeship with or without return of premium, or may order the apprentice to perform his duties, and on breach of such order may imprison the apprentice (after he has been served with a judgment summons) for 14 days.

Husband and Wife.—The Summary Jurisdiction (Married Women) Act 1895 enables justices to grant a wife a judicial separation. A wife can apply to a court of summary jurisdiction for an order under this Act if her husband—

(1) Has been convicted of an aggravated assault on her, under sec. 43 of the Offences Against the Person Act 1861; *or*

(2) Has been convicted on indictment of any assault on her and fined over £5 or imprisoned over 2 months; *or*

(3) Has deserted her; *or*

(4) Has been guilty of persistent cruelty (this may be on one day only, Broad v. Broad, 78 L. T., 67), which has caused her to leave and live separately and apart from him; *or*

(5) Has wilfully neglected to reasonably maintain her or her infant children, which has caused her to leave and live separately and apart from him; *or*

(6) If her husband is a habitual drunkard within the meaning of sec. 3 of the Habitual Drunkards Act 1879, *ante*, page 46. (This sixth case is added by sec. 5 of the Licensing Act 1902.)

The application is by summons, and the ordinary Summary Jurisdiction procedure applies. The order made can do four things—(1) grant a separation order having the same effect as a judicial separation for cruelty; (2) give the legal custody of the children to the wife while under 16; (3) direct the husband to pay not more than £2 a week for the wife's maintenance; and (4) deal with costs. A wife guilty of adultery cannot get an order, unless the husband has condoned, or connived at, or by wilful neglect or misconduct conduced to, such adultery. Upon fresh evidence being discovered, any order may be altered, varied, or discharged at any time on a summons by either party. If the wife returns to cohabitation, or commits adultery, the order must be discharged. The payment of money is to be enforced like arrears under a bastardy order (*ante*, page 191). Justices can refuse an order if they think the case more suitable for the High Court, but such court can remit the matter to the justices.

Appeals lie to a divisional court of the Divorce Division, and are brought by serving the other side, within 21 days

after the decision of the justices, with a notice of motion and filing a copy of it in the Divorce Registry (Swoffer v. Swoffer (1896), 65 L. J., P., 82). If the husband is convicted on indictment (case 2 above), the court before which the conviction takes place can forthwith make an order under this Act. The Act is retrospective. The wife's summons must be taken out within six months of the cause of her complaint, except in case of desertion (Heard v. Heard (1896), P., 188).

If a wife is a habitual drunkard, the husband may apply to a petty sessional court for an order granting him a judicial separation and the legal custody of the children, and directing him to pay not more than £2 a week to or for the use of the wife, and dealing with costs. But instead of such order, the justices may send the wife, provided she consents, to an inebriate home, under sec. 10 of the Habitual Drunkards Act 1879. (Licensing Act 1902, sec. 5.)

Drunkenness.—A person found drunk in any highway or other public place may be apprehended if he appears to be incapable of taking care of himself, and dealt with according to law (Licensing Act 1902, sec. 1), and punished by 10s. or 7 days; and a second time within a year, by 20s. or 14 days; and a third time, by 40s. or a month (Licensing Act 1872, sec. 12). A person who is drunk and disorderly, *or* drunk while in charge of a carriage or horse or cattle or steam engine in a public place, *or* drunk and in possession of a loaded firearm (Licensing Act 1872, sec. 12), *or* drunk in a public place or on licensed premises while in charge of a child apparently under 7 (1902 Act, sec. 2)—may be locked up and fined 40s. or a month; and on a fourth conviction within 12 months for any of these offences or the 19 offences set out in the Inebriates Act 1898, is liable, if a habitual drunkard, to be sent for 3 years to an inebriate home—but this can only be done in a court of summary jurisdiction by consent (1898 Act).

Landlord and Tenant.—The Small Tenements Recovery Act 1838 enables justices to grant ejectment orders (1 & 2 Vict., c. 74). When a tenancy at will, or not exceeding seven years, at a rent not exceeding £20 a year (whether the tenant pays the rates or not), has ended or been duly determined by notice, but possession is not given up to the landlord—the landlord may serve a written notice that he will apply at a specified day and hour to justices for a warrant of ejectment, unless possession is given up within seven clear days. The landlord then lodges his complaint before two justices, and proves the tenancy, its end, service of the notice, and omission to give possession, and the justices can issue a warrant to the constable to forcibly eject the wrongdoer after 21 but within 30 days from the date of the warrant. No costs can be awarded.

When any tenant fraudulently or clandestinely removes his goods (to a value of not more than £50), to prevent his landlord distraining for rent *then due*, a complaint may be laid by the landlord or his bailiff or agent before two disinterested justices residing near where the goods are taken from or found. The complaint must be in writing, and laid within six calendar months. The tenant is then summoned to appear before two justices, and the tenant and any person who wilfully and knowingly aided him may each be ordered to pay the landlord double the value of the goods removed. Payment is enforced (after notice of the order) by distress or imprisonment, but there is a right of appeal to quarter sessions. (11 Geo. II., c. 19; 11 & 12 Vict., c. 43, sec. 29; 13 & 14 Vict., c. 91, sec. 9.)

If the goods of a lodger or undertenant or stranger are taken in distress for the tenant's rent, the owner of the goods may serve the landlord or his bailiff with a declaration that the goods are his and an inventory of the goods, and may pay or tender to the landlord or his bailiff any rent which he owes to the tenant. If after this the landlord

refuses to give the goods up, the owner of the goods can (except in certain cases) apply to a petty sessional court for an order to give up the goods. (Distress Act 1908.)

If a tenant deserts the demised premises and leaves the same uncultivated or unoccupied, and the rent is not less than three-fourths of the yearly value of the premises, and half a year's rent is in arrear, then—whether the demise be written or verbal, and although it does not give a right of re-entry—the landlord may request two justices to go and view the premises and to leave thereon a written notice fixing a time (more than a fortnight in advance) when they will take a second view; and if on the second view the rent is not paid and there is not sufficient distress, the justices are to put the landlord in possession. (11 Geo. II., c. 19, sec. 16; 57 Geo. III., c. 52.)

Intoxicating Liquor.—A person who wishes to sell intoxicating liquors by retail must first get a licence or certificate from the licensing justices before he can get the excise licence to sell, unless he is a wine merchant or a wholesale spirit dealer with an excise licence to sell not less than a bottle. For this purpose, a general annual licensing meeting is held during the first 14 days in February in each county and borough with a separate commission of the peace (and an adjourned meeting within one month) at which the justices grant licences to remain in force for one year, and at which special sessions (not less than four nor more than eight) are appointed to be held during the next year for transfers of licences, etc. (See the Licensing (Consolidation) Act 1910.)

There are about a dozen different licences. The principal are as follows: (1) Alehouse, or victuallers, or publicans, or full, licence to keep an inn and to sell beer and cider, spirits, foreign wines, and sweets (British wines), for consumption on or off the premises. (2) Beerhouse licence, to sell beer and cider for consumption on or off. (3) Winehouse

licence, on or off. (4) Sweets licence, on or off. (5) Off licence only, to sell beer and cider *or* foreign wines and sweets *or* sweets.

New Licence.—The applicant must serve written notice, on the clerk to the justices and one of the overseers and the superintendent of police, 21 days before his application can be heard, and for two successive Sundays exhibit the notice on the doors of the parish church and of the premises, and advertise it in a local newspaper. Also if he wants an "on" licence, he must deposit a plan of the premises with the justices' clerk 21 days before the licensing meeting. He then attends at the general annual licensing meeting (or adjournment thereof) and the justices enquire into his character and the qualifications of his premises. If the application is opposed, the justices take any evidence that is tendered, but this need not be on oath. The justices cannot decline to hear the application. The justices have an absolute judicial discretion to grant or refuse an application for every kind of new licence. On the grant of a new licence, it may be for a fixed time not exceeding seven years instead of being annual; and every new licence (both "off" and "on") must be confirmed by quarter sessions. (Licensing (Consolidation) Act 1910, secs. 12-15.)

Renewal.—The licence holder applies yearly for a renewal licence, at the general annual licensing meeting. He need not attend in person, unless the justices require him to do so for some special cause personal to himself. The justices may insist on a plan of the premises being produced and deposited with their clerk. No objection to, or evidence against, the renewal can be taken, unless seven days' written notice is given to the applicant before the meeting stating the ground of opposition. Evidence against and for the renewal must then be on oath. The justices cannot refuse the renewal licence of any "off" licence for wines, spirits, liqueurs, sweets, or cider, which was *in force on*

25th June, 1902, to the person holding it on that date, except for (1) failure to prove the applicant's good character, or (2) the house being a disorderly house or one frequented by bad characters, or (3) forfeiture of a previous licence for misconduct, or (4) disqualification of the applicant or his premises, or (5) surreptitious sales, or (6) misconduct of the business. The justices can refuse the renewal of an "on" licence for beer or cider which was *in force on 1st May, 1869*, on the grounds of (1) failure of applicant to prove his good character, or (2) the house being a disorderly house or frequented by bad characters, or (3) the applicant having previously forfeited a licence or been disqualified for one, or (4) disqualification of the applicant or his premises. They can also refuse the renewal of any other "on" licence which was *in force on 15th August, 1904*, on the grounds that the premises have been ill conducted or are structurally deficient or structurally unsuitable, or grounds connected with the character or fitness of the applicant, or that the renewal would be void; and if the licence holder has persistently and unreasonably refused to supply suitable refreshment (other than intoxicants), the premises are to be deemed to have been ill conducted. If the justices think the renewal of any such two kinds of old "on" licences ought to be refused for any other ground than those named above, they must refer the renewal to the compensation authority for the district—which then considers the case and the report of the justices, and may hear all interested parties, and may refuse the renewal on payment of compensation provided by a tax on licence holders in the district. The justices have an absolute discretion to refuse the renewal of any "new" on licence, as distinguished from the "old" ones above set out. (See Licensing (Consolidation) Act 1910, secs. 16-21.)

Transfer to New Tenant.—The old tenant must apply at petty sessions for the justices, after examining all necessary parties on oath, to endorse the licence to the new tenant by

way of protection order until the next special sessions for the transfer of licences. From four to eight of such special sessions are appointed at the general annual licensing meeting. Then the old tenant must, 14 days before the next special sessions, serve notice on the overseers and police superintendent, giving full particulars, and apply at such special sessions for the permanent transfer. Both the licence holder and the proposed transferee must (unless excused by the justices) attend at the special sessions, and the agreement under which the licence is to be transferred and held must be produced. If the justices refuse the transfer of an old "on" licence, they must refer the matter to quarter sessions for decision as stated above with respect to their refusal to renew an old "on" licence (1910 Act, secs. 22, 23, 25, 88).

Special Grant.—If a licence holder dies, or becomes too ill to carry on, or becomes bankrupt, or removes from the premises, or gives up possession, or being about to quit fails to renew the licence, or the premises are about to be pulled down, or are destroyed by fire, etc.—the justices may grant a protection order until the next special sessions and may then grant a new licence until the next annual licensing meeting. (Licensing (Consolidation) Act 1910, secs. 23, 88.)

Provisional Licence.—If a person wishes to obtain an "on" licence for a building to be erected or then in course of erection, he should obtain information as to the present number of licensed houses in the district, the views of the licensing body and the head of the local police on new licences, and what support the inhabitants of the district will give him. Then deposit the plans of the proposed building, and apply at the annual or adjourned licensing meeting for a provisional grant of a licence, and after the erection of the premises apply again for the confirmation of the licence on evidence that the building has been erected

in accordance with the plans (Licensing (Consolidation) Act 1910, sec. 33).

Offences by licence holders will be found in secs. 65 to 80 of the Licensing (Consolidation) Act 1910. Every conviction of a licensed person for an offence against the licensing laws is to be recorded in the register of licences kept by the justices' clerk, and notice thereof is to be served on the owner of the premises, and the justices on all applications for a licence, either by the person convicted or for the premises, must consider the entries in the register against the applicant and against the premises (Licensing (Consolidation) Act 1910, secs. 50-53, 86).

Poor Rates.—These are made by the majority of the churchwardens and overseers, and are allowed (signed) by two justices acting ministerially, and are then published. On non-payment, under the Distress for Rates Act 1849, a summons is issued and served. The hearing is before two justices. The overseers must prove the due allowing of the rate, that defendant was rated, demand for payment, non-payment for seven days after demand, and service of the summons. The justices then issue a distress warrant, and on default of distress may imprison up to 3 months.

Security to Keep the Peace.—Lodge a complaint and issue a summons; on the return day make oath that the man has threatened you, and you are in fear of death or bodily harm, and are not acting maliciously. The complainant and defendant and others may be called as witnesses. An order may be made to enter into a recognizance and find sureties. If the order is not complied with, the defendant may be committed to prison by a petty sessional court for 6 months, or by a non-petty sessional court for 14 days. On a subsequent breach of the peace the justices may by a conviction forfeit the recognizance and order the parties bound to pay the sums for which they were bound (S. J. Act 1879, secs. 25, 9).

Search Warrant.—This is an authority to enter and search premises. It may issue (1) on the oath of a complainant that he has a reasonable and probable cause to suspect that his property has been *stolen*, to search the premises of a person suspected of the felony; or (2) on the oath of a credible witness, proving reasonable suspicion that a person has in his possession or on his premises any property as to which an offence, punishable under the Larceny Act 1861, has been committed; or (3) under the Coinage Act 1861, Forgery Act 1861, Licensing Act 1910, Explosive Substances Act 1883, Criminal Law Amendment Act 1885 (see page 67), Merchandise Marks Act 1887, and a variety of statutes. As the application for a search warrant involves one for a warrant to arrest, it is the duty of the justice to cause the person on whose premises stolen goods are found to appear before him and account for his possession of the property.

Truck Acts.—These Acts (1831, 1887, and 1896) apply only to workmen as defined *ante*, page 192. They forbid the payment of wages in goods or in any other way than by current coin, under a penalty of £10 on summary conviction, and £20 on a second offence, and £100 on a third. But this does not prevent deductions from wages (under a contract signed by the workman) of the true value of medical attendance, rent of a cottage, and fuel; nor deductions in the way of fines for breach of duty or misconduct, provided the contract is signed by the workman or its terms are put up in a notice constantly exhibited in a place open to the workman, *and* such contract or notice specifies the breaches of duty or misconduct and the fine for each, *and* the breach of duty or misconduct is likely to cause loss to the employer or interruption to his business, *and* the amount is fair and reasonable (but see Williams v. North's Navigation Collieries (1906), 75 L. J., M. C., 334).

V.—TEST QUESTIONS.

Including Selected Questions set at the Bar Examination since 1872.

General Questions.

Q. What are the chief distinctions between a crime and a civil injury? (Ante, p. 6.)

Q. Distinguish a tort from a contract, and from a crime.

A. A *tort* is an injury to private rights not arising out of contract; no privity is necessary between the parties; and it is remediable by action for damages, in which the motive for the tort is an important element in fixing the compensation. A *contract* is an agreement between two or more parties to do or refrain from doing something for sufficient consideration; it is founded on consent; there must be privity between the parties; and a breach will give rise to an action of contract, in which the motive for the breach is usually immaterial, and the damages are more or less settled from the terms of the agreement. A *crime* is an act of disobedience to law (common or statute) forbidden under pain of punishment. The remedy for crime is by indictment, inquisition, or information.

Q. Can you put a case involving the elements of a tort, a breach of contract, and a crime, and capable of being made the subject-matter either of an action or of a criminal prosecution?

A. If A obtains goods fraudulently, under circumstances that render him liable to be indicted, and afterwards sells the goods and receives the proceeds of sale—he is liable (1) to be indicted for fraud; (2) to an action of tort by the rightful owner for the recovery of the goods or their value; or (3) to

an action *ex contractu* for money had and received. If B hires furniture and sells it, he is guilty of larceny as a bailee, of conversion, and of breach of contract.

Q. Give instances of offences (a) *against the State;* (b) *against the public peace;* (c) *against the administration of justice;* (d) *against public morality and order.*

A. (*a*) Treason, seditious libels, conspiracy, coinage offences, and concealment of treasure trove. (*b*) Sending threatening letters, assault, rout, riot, unlawful assembly, and libel. (*c*) Compounding a felony, escape, rescue, perjury, and contempt of court. (*d*) Bigamy, infringement of the game laws, nuisance, vagrancy, and indecent conduct.

Q. Give an instance where an offence against the law is not indictable.

A. Where it is punishable on summary conviction; *e.g.*, common assaults, small wilful injuries to property, first offence of stealing a dog, drunk and disorderly, profane cursing.

Q. When a statute simply prohibits or commands a matter for the public advantage, without specifying any particular mode of proceeding in respect of a breach of the prohibition or command, is such breach punishable as a crime?

A. Yes, it is a misdemeanour at Common Law, and is punishable by indictment.

Q. Does a civil action lie for (1) *felony,* (2) *misdemeanour,* (3) *common assault?* (Ante, pp. 7-10.)

Q. What crimes are indictable? (Ante, p. 12.)

Q. What are the principal distinctions between felony and misdemeanour? (Ante, pp. 13, 14.)

Q. Explain Nemo reus est nisi mens sit rea, *with reference to incapacity to commit crime?* (Ante, p. 15.)

Q. (1) *Illustrate the meaning of "intention" in criminal law.* (2) *Specify some statutory offences where the intention is immaterial* (*except in respect of punishment*). (Ante, pp. 15-19.)

Q. Is intention to commit crime punishable? (Ante, p. 19.)

Q. Explain fully the attempt to commit a crime. (Ante, pp. 19, 20.)

Q. What classes of persons are regarded by the law of England as incapable of committing punishable offences? (Ante, pp. 21-26.)

Q. In what cases does the presumption apply that a married woman in committing an offence acted under the coercion of her husband? (Ante, p. 22.)

Q. Does drunkenness constitute incapacity or excuse for crime? (Ante, p. 24.)

Q. Would infancy, compulsion, or ignorance, be an excuse for crime? (Ante, pp. 22, 25, 26.)

Q. What must be proved to secure a verdict of guilty but insane? (Ante, pp. 23, 24.)

Q. Can a master ever be punished for the crimes of his servant? (Ante, p. 25.)

Q. Give illustrations of Accessory before the fact, Principal in first degree, Principal in second degree, and Accessory after the fact. (Ante, pp. 26–29.)

Q. How may accessories now be prosecuted? (Ante, p. 29.)

Q. Explain preventive detention and police supervision. (Ante, pp. 33, 36.)

Q. Who may be sent to (1) *a reformatory*, (2) *an industrial school?* (Ante, p. 36.)

Q. Can the costs of prosecution or defence, or both, be ordered to be paid out of public funds? (Ante, pp. 37, 38.)

Q. Can the accused be ordered to pay the prosecutor's costs? (Ante, p. 38.)

Q. Can the prosecutor be ordered to pay the accused's costs? (Ante, p. 38.)

Q. What is a Borstal Institution? (Ante, p. 40.)

Q. What is a Juvenile Court? (Ante, p. 41.)

Q. What provisions as to juvenile offenders are contained in the Children Act 1908? (Ante, pp. 40–43.)

Q. What is enacted by the Probation of Offenders Act 1907? (Ante, p. 45.)

Q. Who is a habitual drunkard? (Ante, p. 46.)

Q. State the different punishments for indictable criminal offences. (Ante, pp. 31–46.)

Q. Enumerate the offences for which the punishment of flogging may be inflicted. (Ante, p. 35.)

Q. Give a concise account of the Forfeiture Act 1870, and the Probation of Offenders Act. (Ante, pp. 39, 45.)

Offences against the Person.

Q. Into how many classes is homicide usually distinguished? Define each class, and give two examples under each class. (Ante, pp. 46-48.)

Q. Define murder and manslaughter. (Ante, pp. 49, 53.)

Q. Define the term "malice aforethought" as applicable to the crime of murder. (Ante, pp. 50–52.)

Q. Can a person under any, and what, circumstances be found guilty of murder, who did not intend to commit same or do injury to any human being?

A. Yes, if such person killed another when he had an intention to commit felony, *or* acted with wanton indifference to life in the performance of any act (lawful or unlawful) likely to cause death. (Ante, pp. 51, 52.)

Q. A unlawfully inflicts bodily injury on B. B consults a surgeon, who advises an operation, under which B dies. The operation is proved to have been unnecessary, and to have been the proximate cause of death. Does any criminal liability attach to A, or to the surgeon, or to both?

A. A is guilty of causing B's death (R. v. Pym, 1 Cox, 339); whether he is guilty of murder or manslaughter will depend upon how A caused the bodily injury. The surgeon is guilty of no offence if he acted in good faith and performed

the operation in a proper manner (R. v. Davis, 15 Cox, 174).

Q. A being charged with the legal duty of providing the necessaries of life for B, delegates the duty to C, his servant, and supplies C with the means of discharging it. C neglects to carry out his instructions, and in consequence B dies. Does any criminal responsibility attach to A or C, or to both, and, if so, upon what ground?

A. If C intended to cause B's death, C is guilty of murder; but if C did not contemplate B's death, and was merely guilty of culpable neglect of duty, C is guilty of manslaughter. If A were conscious of the course C was pursuing, and did not interfere, A is guilty of murder or manslaughter; but otherwise A is innocent (R. v. Bubb, (1855), 4 Cox, 445). The reasoning is that A must discharge his legal duty himself, or take ordinary care that his agent does so; and C is bound to perform the duty for which he is employed.

Q. A nurse having instructions to feed a patient at certain times, intentionally neglects to do so, and thereby causes the patient's death. Can the nurse be indicted?

A. Yes. Intentional nonfeasance amounts to murder; as in R. v. Friend (R. & R., 20), where it was the duty and in the power of the prisoner to supply food to a child unable to provide for itself, and the child died because no food was supplied. If the negligence is not deliberately intended, but arises from carelessness, the crime is only manslaughter.

Q. A and B agree to rob a house, and set out for that purpose. A repents and turns back. B proceeds; but before he reaches the house is arrested by a constable, who suspects his purpose. B, to regain his liberty, strikes the constable a blow, of which eventually he dies. What offence have A and B respectively committed?

A. The constable was acting in the course of his duty,

and as the crime intended to be committed was felony, B is guilty of murder, for the blow struck was intentional (R. v. Porter, 12 Cox, 444). A has committed no offence (beyond conspiracy), on the principle that where one of a party commits a crime foreign to the common criminal purpose, the others are not responsible (R. v. Plummer, Kel., 109).

Q. Is any crime committed in the following cases:—(1) *A uses provoking language or behaviour towards B, and B strikes him, whereupon a fight ensues, in which B is killed?* (2) *C, similarly provoked by D, draws his sword and makes a pass at D whose sword is undrawn, and thereupon D draws, and a combat ensues in which D is killed?*

A. (1) A is guilty of murder if, before the parties met, he had formed the deliberate design to kill B, and the jury find that the death was in consequence of the previous malice and not of the sudden quarrel (R. v. Kirkham, 8 C. & P., 115); but otherwise, A is only guilty of manslaughter, for the affray was sudden, the parties fought on equal terms, and it makes no difference which gave the first blow (R. v. Mawgridge, Kel., 128). (2) C is guilty of murder; for making his pass whilst D's sword was undrawn shows malice, and D's endeavour to defend himself, which he had a right to do, will not excuse C (Foster, 290).

Q. What offence is committed in the following cases:— (1) *A, either by actual violence or by threats operating on B's mind, drives B to jump out of a railway carriage to escape his violence, an act which causes B's death?* (2) *A householder kills a man* (a) *in the act of attempting to set fire to his house,* (b) *trespassing on his land only, though with a felonious intent?* (3) *A, having authority to arrest B, is resisted while using proper means for the purpose, and in the struggle* (a) *kills B,* (b) *is killed by B?*

A. (1) Murder. (2) (*a*) No offence, it is justifiable homicide if A uses only reasonable and necessary force; (*b*) Manslaughter, and, if there are any circumstances

evidencing malice, murder. (3) (*a*) No offence, it is justifiable homicide; (*b*) Murder. (Ante, p. 57.)

Q. What are the principal rules of law as to homicide in the course of the arrest or attempted arrest of a criminal? (Ante, p. 57.)

Q. On the trial of an indictment for murder, can evidence ever, and when, be given for the purpose of proving that the prisoner has committed other murders?

A. Such evidence is admissible to show that the death was not accidental (Makin v. Att. Gen., 69 L. T., 778).

Q. What provocation will reduce homicide which would otherwise be murder to manslaughter?

A. The provocation must be very gross (*e.g.*, when a man finds another in adultery with his wife), and the killing must be on the spur of the moment. No amount of provocation, by words or gestures, will reduce murder to manslaughter. (Ante, pp. 54, 55.)

Q. Two men quarrel and fight on the instant. One snatches up a mallet with which he has been working and kills the other with it. Of what offence is he guilty? (Ante, p. 55.)

Q. Under what circumstances may negligence without malice afford ground for a criminal prosecution?

A. Whenever the negligence is of a really culpable kind. This frequently occurs in manslaughter, for generally what constitutes murder when done by fixed design, constitutes manslaughter when it arises from culpable neglect, *e.g.*, when a medical practitioner is unfit for what he professes to do, or a near-sighted man sitting in the bottom of his cart drives rapidly and kills a foot-passenger. But there must be *personal* negligence, and this must cause the death. (Ante, p. 18.)

Q. A prize fight takes place between A and B, at which A is killed. Of what offence are B and the seconds guilty?

A. B is guilty of manslaughter, for he has caused A's death while engaged in an unlawful act not amounting to

felony. The seconds are principals in the second degree, as they were present to further an unlawful common object.

Q. What differences can you give between attempted suicide and attempted murder? (Ante pp. 48, 49, 52.)

Q. Define libel. When can a defendant indicted for libel plead that the matter complained of is true?

A. Libel is the malicious defamation of another made public by writing, printing, picture, or effigy, in such a way as to expose the person libelled to public hatred, contempt, ridicule, reproach, or ignominy. When he also pleads that the alleged libel was published for the public benefit, and sets out the facts showing this (Libel Act 1843, sec. 6).

Q. Is there any difference between an action and a prosecution for libel, in respect of the defence open to the defendant?

A. In an action for libel—proof that the alleged libel is true is a good defence. In a prosecution for libel—it is not sufficient merely to prove that the libel is true, but it must also be shown that it was for the public benefit to publish it (Libel Act 1843, sec. 6).

Q. A witness in a court of justice falsely and maliciously says of a trader that he is on the point of becoming insolvent, and a newspaper, in reporting the proceedings, publishes the observation. Are the witness or the proprietor of the newspaper liable to civil or criminal proceedings?

A. The witness would not be liable to a civil action for slander, as a witness in a court of justice is absolutely privileged as to anything he may say having reference to the inquiry on which he is called as a witness (Seaman v. Netherclift, 2 C. P. D., 53); but he might be prosecuted criminally for perjury, if the statement made be material to the cause or issue in question. The proprietor of the paper will not be liable, either civilly or criminally, so long as the published matter is only a fair report of the proceedings, and is not blasphemous or indecent (Libel Act 1888, sec. 3).

Q. A newspaper publishes a report of the proceedings in

a nisi prius cause, and in a leading article says of the judge that he "made sad blunders," and that his "ignorance of the law was by no means the worst feature in the case." Is the editor liable to any civil or criminal proceedings?

A. The report is privileged, if it is fair and accurate and not blasphemous or indecent (Libel Act 1888, sec. 3). As to the leading article—fair criticism on public men and matters of public interest (*e.g.*, the administration of justice), however severe, is not a libel; and the editor is not liable, unless the article is held to pass the bounds of fair criticism.

Q. What step must be taken before commencing criminal proceedings for libel against the proprietor, publisher, editor, or any person responsible for publication of a newspaper, for any libel published therein?

A. The order of a judge at chambers must be obtained after notice to the accused, who may be heard against it (Libel Act 1888, sec. 8); and there is no appeal from the order (R. v. Perryman, 61 L. J., M. C., 91). But if the prosecution is by criminal information (instead of indictment) the leave of a divisional court must be obtained on motion (Yates v. The Queen, 14 Q. B. D., 648).

Q. When will the court grant leave to file a criminal information for libel?

A. The applicant must occupy some public office (*e.g.*, justice of the peace), and the libel complained of must attack him in relation to that office and not as a private person. If the applicant resides abroad, this is a powerful argument against the interference of the court, as no breach of the peace is likely to follow. If the subject of the libel is dead, that is almost conclusive against allowing an information (R. v. Labouchere, 53 L. J., Q. B., 362).

Q. What criminal jurisdiction was given to justices by the Newspaper Libel and Registration Act 1881, secs. 4 and 5?

A. On a charge against the proprietor, publisher, or editor of a newspaper for a *libel published therein*, they may take

evidence showing whether the publication was for the public benefit, and was fair and reasonable, and without malice, and any other evidence which could be given in defence at the trial; and may dismiss the charge if they think a jury would not convict. Also, if the libel is trivial, and the accused consents, they may convict summarily and fine up to £50.

Q. On the hearing before a magistrate of an information for publishing a defamatory libel, he is asked to receive evidence of the truth of the libel. What course should he adopt, and why? (Ante, pp. 60, 61.)

Q. Define bigamy. (Ante, p. 61.)

Q. A is indicted for bigamy. It is proved that he was married to B in 1860, and lived with her till 1863, when they separated, and never lived together again. In 1875 A was married to C. No witness is called to prove that A knew of B's existence between 1863 and 1875, and the only person who could prove it is B herself, who once had an interview with A in 1870. Can the prosecution call B as a witness?

A. B cannot be called as a witness for the prosecution; and the prosecution fails, because it is not proved that A was not continually absent from B for seven years prior to the second marriage, and that A did know of B's existence within that time (24 & 25 Vict., c. 100, sec. 27; R. v. Curgerwen, 35 L. J., M. C., 58). But if it had not been proved in evidence that A and B separated, the prosecution would then succeed (R. v. Jones, 48 L. T., 768).

Q. What is a brothel? And what proceedings can be taken in respect of it? (Ante, p. 67.)

Q. When is abduction (1) *a felony,* (2) *a misdemeanour?* (Ante, pp. 68-70.)

Q. Specify the offences in connection with abortion. (Ante, p. 71.) 70.

Q. When is a person indictable for endeavouring to conceal the birth of a child? State the effect of the enactments on this subject. (Ante, p. 72.)

Q. What is kidnapping? (Ante, p. 71.)

Q. What points must be proved to get a conviction for cruelty to a child? (Ante, p. 72.)

Q. May a child be employed at a place of public entertainment? (Ante, p. 75.)

Q. How may (1) *common,* (2) *aggravated, assaults be punished?* (Ante, p. 75.)

Q. When have justices no summary jurisdiction in assault cases? (Ante, p. 76.)

Offences against Property.

Q. Define "larceny" and "robbery." (Ante, pp. 79, 88.)

Q. Define "embezzlement" and "false pretences." (Ante, pp. 88, 91.)

Q. Distinguish between "larceny" and "embezzlement," and give one example of each. (Ante, p. 89.)

Q. Distinguish between "larceny" and "obtaining by false pretences." (Ante, p. 93.)

Q. What averments are necessary in an indictment for false pretences? (Ante, p. 94.)

Q. A obtains goods in exchange for a cheque drawn on a banker with whom he had no account. B obtains goods in exchange for a cheque drawn on a bank with which his account was in effect closed and with knowledge that the cheque would not be paid. Do A and B respectively commit any offence?

A. A is guilty of obtaining goods by false pretences (R. v. Jackson, 3 Camp., 370). B is also guilty of the same misdemeanour (R. v. Hazelton (1874), 44 L. J., M. C., 11); but it would be otherwise if B had reason to believe the cheque would be honoured.

Q. A gets £10 from B by pretending that he wants that sum to make up his rent, while he has in fact no intention of paying the rent but means to spend the money. Is this a crime?

A. B intended to part with his ownership in the £10, so it is not larceny. And it is not false pretences, for there is no statement untrue as to past or present fact (R. v. Lee, 9 Cox, 304; 62 & 63 Vict., c. 22).

Q. State shortly what the averments would be in an indictment for obtaining goods by means of a worthless cheque.

A. That accused knowingly did falsely pretend to prosecutor that the cheque was a valid order for payment of the sum for which it was drawn, and that he had authority to draw it; that accused obtained the goods by such false pretences; and that in truth the cheque was not a valid order and accused had not authority to draw it, as accused well knew at the time. (Archbold, 564.)

Q. If a prisoner charged before a magistrate with obtaining money by means of false pretences is discharged by such magistrate, has the prosecutor any remedy?

A. He can compel the magistrate, under sec. 3 of the Vexatious Indictments Act 1859, to bind him over to prosecute the charge, and to transmit the recognizance, information, and depositions to the proper court before which the indictment ought to be preferred, just as if the accused had been committed for trial. By 30 & 31 Vict., c. 35, sec. 2, if the prosecution then fails, the prosecutor may be ordered to pay costs to the accused.

Q. What things, not the subject of larceny at Common Law, have been made the subject thereof by statute? (Ante, pp. 80, 81.)

Q. (1) *A enters B's field and takes away a cart-load of sand.* (2) *C demolishes and removes an empty house belonging to D.* (3) *E takes away F's rabbits and ferrets from their cages. Can they be punished respectively?*

A. (1) If A dug up the sand from a bed, no criminal proceedings lie against him for theft, but he might possibly be got at under the Malicious Damage Act 1861, *e.g.*, if he

broke a fence. If the sand was part of a loose heap, A is guilty of larceny at Common Law. (2) C is liable to 5 years' penal servitude under sec. 31 of the Larceny Act 1861, for the statutory felony of stealing glass, woodwork, metal or fixtures fixed in a building; or to 2 years' hard labour under sec. 51 of the Malicious Damage Act 1861, for unlawful and malicious damage exceeding £5 to property. (3) E is guilty of a Common Law larceny of rabbits, if they are wild animals kept in captivity for food or profit. If not, E can be convicted summarily under sec. 21 of the Larceny Act 1861, for stealing a bird, beast or other animal ordinarily kept in a state of confinement, or for a domestic purpose, but not being the subject of Common Law larceny, and is punishable with 6 months' hard labour or £20 fine beyond the value. The ferrets come under this section only.

Q. A man seeing some dead rabbits left by a shooting party in a collected heap under a hedge picks them up and takes them away. Is he guilty of any offence?

A. The dead body of a wild animal can be the subject of theft (Blades v. Higgs, 34 L. J., C. P., 86). If the shooting party had the right to kill and take these rabbits, the property and possession have duly vested in them; and the fact that the rabbits have been collected and placed in a heap under a hedge is evidence that the party had not abandoned or had any intention to abandon them; so the man is guilty of larceny (R. v. Townley, 1 C. C. R., 315).

Q. What is the punishment for stealing (a) *horses, cows, or sheep;* (b) *a dog?*

A. (*a*) 14 years' penal servitude, felony, Larceny Act 1861, sec. 10. (*b*) The first offence is only punishable on summary conviction with 6 months' imprisonment or a fine of £20 beyond the value of the dog; but a subsequent offence is a misdemeanour punishable with 18 months (*Ibid.*, sec 18). If the dog had a collar on, the thief might get 3 years' penal servitude for simple larceny of the collar.

Q. Under what circumstances will the appropriation of lost goods by the finder amount to larceny? (Ante, p. 86.)

Q. Can goods which have been stolen, and sold by the thief, be recovered by the owner from an innocent purchaser?

A. In all cases—if the property is not cash, or a negotiable instrument (payable to bearer or payable to order and indorsed in blank). But if the stolen property is sold in market overt, the owner must first prosecute the thief to conviction, and then the property revests in him, at once if the court so orders, but otherwise not until the end of ten days after conviction and the determination of any appeal brought within that time (Criminal Appeal Act 1907, sec. 6). He can then obtain an order for restitution from the court which convicts, or can bring a Common Law action for conversion of the goods (Larceny Act 1861, sec. 100; Sale of Goods Act 1893, sec. 24). But if goods have been obtained by false pretences or other wrongful means not amounting to larceny, a conviction does not enable the owner to recover the goods from an innocent purchaser (*Ibid.*). The innocent purchaser of the stolen goods may get an order for compensation out of any money found on the thief when arrested (30 & 31 Vict., c. 35, sec. 9), or may ask the court which convicts to condemn the thief in compensation not exceeding £100, under the Forfeiture Act 1870.

Q. Upon the conviction of a prisoner for larceny, what power has the court to order restitution of the goods stolen (a) *when found in the possession of the prisoner,* (b) *when in the hands of a pawnbroker, with whom the prisoner has pawned them?*

A. (*a*) Full power (Larceny Act 1861, sec. 100, and Sale of Goods Act 1893, sec. 24), subject to the suspensory effect of an appeal (Criminal Appeal Act 1907, sec. 6). (*b*) By the Pawnbrokers Act 1872, sec. 30, the court may order the goods, if pawned for not more than £10, to be given up to the owner, with or without payment of all or part of the loan as the court thinks just.

Q. Can a bailee of goods be found guilty of larceny? (Ante, p. 83.)

Q. A, having travelled in a cab, gives the driver by mistake a sovereign, saying at the same time, "Here is your fare, one shilling." The cabman, seeing the mistake, keeps the sovereign, and drives away. Is he guilty of any offence?

A. He is guilty of larceny. See R. v. Ashwell, 16 Q. B. D., 190; R. v. Flowers, *Ibid.*, 643, showing that when A *receives* a thing *innocently*, his subsequent misappropriation of it is not larceny.

Q. A shop-boy sells goods from his master's shop, and appropriates the price. Is he guilty of any offence?

A. If the boy had no authority to sell, he is guilty of larceny of his master's goods (Larceny Act 1861, sec. 67). If the boy had authority to sell, he is guilty of embezzlement of the price. Each offence is felony, 14 years.

Q. Is a servant punishable who steals his master's corn simply to give his master's horses an increased allowance? (Ante, p. 81.)

Q. What is the doctrine of recent possession in larceny? (Ante, p. 97.)

Q. Sacks of flour were being carted by a baker's servant from the railway station to his master's shop, and on the way the servant removed and sold one of the sacks of flour and kept the money. Is this larceny, and, if so, why?

A. Yes, for the sacks passed into the "possession" of the baker as soon as they were placed in the baker's cart (R. v. Reed, *ante*, p. 81).

Q. What is necessary to be alleged in an indictment against a person charged with embezzlement?

A. All the facts essential to constitute the crime, viz.:— (1) The names of the accuser and the employer; (2) the service; (3) the receipt for or in the name of or on account of the master; (4) the unlawful appropriation; (5) the specific sum embezzled; (6) the offence must be directly

charged; and (7) if more than one act is charged, the time when each was committed.

Q. Where a trustee of property for the use of another person, with intent to defraud such other person, converts the property to his own use, is such conversion an offence? (Ante, p. 90.)

Q. State shortly the provisions of the Larceny Act 1901. *How did it alter the law?* (Ante, p. 91.)

Q. Define burglary, housebreaking, and robbery. (Ante, pp. 98, 99, 88.)

Q. How are malicious injuries to property dealt with? (Ante, pp. 101-104.)

Q. What is cruelty to animals? Does it apply to wild animals? (Ante, p. 104.)

Q. What are the principal offences connected with threats and menaces, and how are they respectively punishable? (Ante, pp. 104, 105.)

Q. Define forgery, and give one illustration. (Ante, p. 106.)

Q. State whether the following acts are felonies or misdemeanours, and the extreme punishment for each:— (a) *Manufacturing a false Bank of England note;* (b) *Signing an oil painting with the name of an artist without his permission or knowledge;* (c) *Making or drawing a bill of exchange in the name of another, without his authority or knowledge;* (d) *Writing a recommendation of character with intent fraudulently to obtain a situation.*

A. (*a*) Forgery, felony, penal servitude for life (24 & 25 Vict., c. 98, sec. 12). (*b*) This is not forgery, which must be of some written or printed instrument (R. v. Closs, D. & B., 460); but is a misdemeanour punishable summarily with a forfeiture to the person aggrieved of £10, or double the full price at which the picture was sold (25 & 26 Vict., c. 68, sec. 7). (*c*) Forgery, felony, 14 years' penal servitude (24 & 25 Vict., c. 98, sec. 24). (*d*) If done by a man personating a master, and the character given is a false

one, misdemeanour, punishable with fine up to £20 or 3 months' hard labour (Servants' Character Act 1792).

Q. A customer at an inn, having no money to pay his bill, draws a cheque in a fictitious name, and gives it to the innkeeper in payment. The cheque having been dishonoured, can the customer be convicted for forgery or false pretences?

A. He cannot be convicted of forgery (R. v. Martin, 5 Q. B. D., 34), for the instrument supposed to be forged must be a false instrument, and if A gives a note *as his own*, subscribing it in a fictitious name will not make it forgery (R. v. Dunn, 1 Leach, 57); but he might be convicted of obtaining a chattel (viz., a receipted account) by the false pretence that the cheque was a good and valid order for payment (R. v. Hazelton, 44 L. J., M. C., 11).

Q. Under the Forgery Act 1861 what amounts to a felonious uttering of an instrument feloniously forged?

A. The words of the Act are, "offer, utter, dispose of, or put off." Therefore it is sufficient if there be a tender or an attempt to pass off the instrument; there need not be an acceptance of it by the offeree.

Q. X, a clerk in a post office, sent to a bookmaker a telegram offering to back a certain horse in a race. The telegram purported to have been handed in prior to the running of the race, and the bookmaker accepted the bet, and ultimately paid X the amount he had presumably won. As a matter of fact the telegram was despatched by X after he had received news that the race had been won by the horse in question. Is X criminally responsible for the fraud?

A. Yes, X is guilty of the statutory felony of obtaining money upon a forged instrument under sec. 38 of the Forgery Act 1861, and liable to 14 years' penal servitude. X is also guilty of the misdemeanour of forgery at Common Law. He is also guilty of a serious misdemeanour under the Telegraphs Act, and of the misdemeanour of obtaining money by false pretences (R. v. Riley, 65 L. J., M. C., 74).

Q. What are the chief provisions of the Merchandise Marks Act 1887? (Ante, pp. 107, 108.)

Treason and other Offences.

Q. What amounts to treason to-day? (Ante, pp. 108, 109.)

Q. Explain and illustrate the offence of high treason by imagining the death of the sovereign. (Ante, p. 109.)

Q. Does the publisher of a newspaper article commending the assassination of a foreign sovereign commit any offence? (Ante, p. 53.)

Q. What are the chief peculiarities in trials for treason? (Ante, p. 110.)

Q. What is treason felony? (Ante, p. 110.)

Q. What are the provisions of the Foreign Enlistment Act? (Ante, p. 111.)

Q. Define "conspiracy" generally. (Ante, p. 112.)

Q. Define "unlawful assembly," "rout" and "riot," and state the chief provisions of the statute known as the Riot Act. (Ante, pp. 113, 114.)

Q. State (1) *the circumstances requisite to constitute the offence of perjury; and* (2) *the averment necessary in an indictment for perjury.*

A. (1) The oath must be taken in a judicial proceeding before a competent jurisdiction, and it must be material to the issue, and false (R. v. Aylett, 1 T. R., 63). (2) By the Criminal Law Procedure Act 1851, sec. 20, it is sufficient to set out the substance of the offence charged, and by what court or before whom the oath was taken, without setting out any part of any proceeding in law or equity or the authority of the court or person before whom the offence was committed.

Q. Explain, and illustrate, compounding a felony. (Ante, p. 116.)

Q. What is meant by a common nuisance? (Ante, p. 117.)

Q. What proceedings can be taken for non-repair of a highway? (Ante, p. 118.)

Q. Explain, and give one illustration of, a lottery. (Ante, p. 118.)

Q. What are the statutable enactments relating to the falsification of accounts? (Ante, p. 119.)

Q. Name some of the offences which, if committed by a bankrupt, or person in respect of whose estate a receiving order has been made, render him guilty of a crime, and how may such offences be punished, and under what Act? (Ante, pp. 119, 120.)

Q. What are the principal offences relating to the coin of the realm, and their punishments? (Ante, pp. 120–122.)

Q. Is it an offence for a person to travel in a railway carriage without previous payment of his fare? (Ante, p. 122.)

Q. What are the chief provisions of the Conspiracy and Protection of Property Act 1875? (Ante, pp. 122, 123.)

Q. State how the law deals with (1) *idle and disorderly persons;* (2) *rogues and vagabonds; and* (3) *incorrigible rogues.* (Ante, pp. 123, 124.)

Q. What are "corrupt practices" and "illegal practices" at Parliamentary elections, and how are they punished? (Ante, pp. 125, 126.)

Q. How are corrupt practices amongst public bodies punishable? (Ante, p. 126.)

Q. State concisely the effect of the Prevention of Corruption Act. (Ante, p. 126.)

Q. Define contempt of court. (Ante, p. 127.)

Q. What is piracy? (Ante, pp. 127, 128.)

Q. Specify any criminal offences in connection with religion. (Ante, pp. 128, 129.)

Q. What is the effect of the Sale of Food and Drugs Acts 1875, 1879, 1887 and 1899? (Ante, pp. 129–131.)

Q. How is poaching punishable? (Ante, pp. 131, 132.)

Q. What is the punishment for (1) *gaming in a public place,* (2) *keeping a common gaming house?* (Ante, p. 132.)

Q. Is betting a criminal offence? (Ante, pp. 133, 134.)

Procedure in Indictable Crimes.

Q. Before what courts are indictable offences tried? Under what commissions do the judges on circuit try criminal offences? (Ante, pp. 136, 137.)

Q. Describe the constitution and powers of the Court for the Consideration of Crown Cases Reserved. (Ante, pp. 138, 139.)

Q. How is the Court of Criminal Appeal constituted? Does any further appeal lie from it? (Ante, p. 139.)

Q. What crimes are not triable at quarter sessions? (Ante, p. 137.)

Q. What are the duties of the Director of Public Prosecutions?

A. He is the Treasury Solicitor, and his duties are to institute, undertake, and carry on such criminal proceedings, and to give such advice and assistance to chief officers of police, clerks to justices, and others, as to the conduct of criminal proceedings, as may be prescribed by regulations, or directed by the Attorney General in a special case. It is his duty to prosecute for crimes punishable with death. (42 & 43 Vict., c. 22; 47 & 48 Vict., c. 58; 8 Edw. VII., c. 3.) He must also appear for the Crown before the Court of Criminal Appeal (1907 Act, sec. 12). He also has to consent to indictment of a habitual criminal. (Ante, p. 33.)

Q. What was the object, and the effect, of the Vexatious Indictments Act? (Ante, pp. 141, 142.)

Q. How is a person accused of indictable crime brought before justices? And what Act regulates the subsequent proceedings? (Ante, p. 143.)

Q. When may a constable arrest without a warrant? (Ante, pp. 143, 144.)

Q. Has a private person power to arrest another, and what is his duty, having made such an arrest? (Ante, p. 144.)

Q. Is committal by a magistrate or justices of the peace always a necessary preliminary to the trial of a prisoner at the assizes? (Ante, pp. 139, 140.)

Q. Can a police officer admit to bail? (Ante, pp. 144, 145.)

Q. How do a summons and a warrant differ? (Ante, pp. 145, 146.)

Q. What is meant by backing a warrant? (Ante, p. 147.)

Q. Can a person who has committed a crime in England, and who, to avoid arrest, has taken refuge in another place, be arrested and brought back to this country? (Ante, p. 147.)

Q. What restrictions have been imposed by English statute upon the extradition of fugitive criminals from this country to a foreign State? (Ante, pp. 147–149.)

Q. Can (1) *a British subject,* (2) *a foreigner, be tried in England for a crime committed elsewhere?* (Ante, p. 149.)

Q. Sketch concisely the proceedings before justices on a charge of indictable crime. (Ante, pp. 149–152.)

Q. Where an accused person is under remand before justices charged with an indictable offence, and a person who can give material evidence (for or against him) is too ill to attend as a witness, state the course to be adopted. (Ante, p. 152.)

Q. What opportunity is afforded a prisoner of making a defence or statement before committal for trial, and of calling witnesses? (Ante, pp. 151, 152.)

Q. Is legal aid provided for defence of a criminal? (Ante, p. 153.)

Q. Define "bail," and state what is usually required by justices of a person offering himself as bail for a prisoner in £100, and in whose discretion is the sufficiency of the bail? (Ante, pp. 153, 154.)

Q. What power have (1) *justices of the peace, and* (2) *the King's Bench Division, to admit to bail a person committed for an indictable offence?* (Ante, pp. 154, 155.)

Q. What is an indictment? And a criminal information? (Ante, pp. 141, 142.)

Q. Sketch an indictment for murder. (Ante, p. 155.)

Q. Sketch an indictment for feloniously forging and uttering a bill of exchange for £100.

A. Essex, to wit } The jurors for our Lord the King upon their oath present That A B on the day of , in the year of our Lord 19 feloniously did forge a certain bill of exchange, purporting to be [*copy or purport set out*] with intent thereby then to defraud Against the form of the statute in such case made and provided, and against the peace of our Lord the King, his crown and dignity. And the said jurors further present That the said A B did on the day of in the year of our Lord 19 feloniously offer and utter a certain forged bill of exchange [*copy or purport*] with intent thereby to defraud, the said A B at the time he so offered and uttered the said bill of exchange then well knowing the same to be forged Against the form of the statute in such case made and provided, and against the peace of our Lord the King, his crown and dignity. (Archbold, 679.)

Q. What are the parts of an indictment, and what are the requisites of each part? How far have the Common Law rules on this subject been relaxed by statute? (Ante, pp. 156–158.)

Q. (a) *What is "venue" in criminal trials, and what is the general rule on this subject?* (b) *Where can offences on the high seas or in a foreign country be tried?*

A. (*a*) Ante, p. 156. (*b*) In the King's Bench Division in Middlesex, or at the Central Criminal Court, or in any county in which the accused is apprehended or is in custody.

Q. What exceptions are there to the rule that a count is bad for duplicity? (Ante, p. 158.)

Q. What is the law, and practice, as to charging separate crimes in separate counts? (Ante, pp. 158, 159.)

Q. In what cases, and for what purpose, can a count be added for a previous conviction? (Ante, p. 159.)

Q. A, whilst drunk, severely beats C, and breaks one of C's ribs, besides bruising and scratching him. How would you indict A?

A. For misdemeanour. There should be four counts, charging A with (1) assault causing actual bodily harm, (2) assault causing grievous bodily harm, (3) unlawful wounding, and (4) common assault (R. v. Miles, 17 Cox, 9).

Q. What are the functions of a grand jury? (Ante, p. 160).

Q. How can the court, before which an indictment or inquisition would in the ordinary course be tried, be changed? (Ante, p. 161.)

Q. Describe the proceedings—from the finding of the indictment to the end of a criminal trial.

A. If the accused is not present to take his trial, process* must issue to bring him before the court. Then follows arraignment. Motion to quash the indictment for any defect; amendment of a formal defect. Demurrer. The prisoner pleads; and issue is joined. Petty jury sworn (subject to the right of both the Crown and the prisoner to peremptorily challenge and to challenge for cause) and charged. Case opened by the counsel for the prosecution, and witnesses are called for the prosecution. After the case for the prosecution is closed, it is ascertained whether the defence intend calling witnesses (other than witnesses as to character of the accused). If they do not (or if accused is the only witness for the defence, as soon as he has given his evidence), counsel for the prosecution addresses the jury a second time in support of his case and to sum up the evidence against the prisoner; and counsel for the defence addresses the jury

* See hereon, next answer,

last. If the prisoner calls witnesses (other than himself) on the merits, his counsel opens his case, and calls witnesses in support and sums up the evidence. Counsel for the prosecution then has a right of reply. The judge sums up on the whole case. Verdict is found by the jury. The prisoner is asked if he has anything to say against sentence, which is then pronounced. If the Attorney General or Solicitor General is prosecuting officially, he has the official privilege of addressing the jury last, even though the accused calls no evidence (5 St. Tr. (N. S.), 3*n*).

Q. A warrant having been granted against A and B for feloniously stealing goods, and against C for feloniously receiving the same; and A and B only having been arrested and committed for trial; and at the sessions all three having been indicted, A and B for larceny, and C for receiving; and a true bill having been returned by the grand jury against the three; and A and B having been tried and convicted, but C never having been apprehended: what should be done to put C on his trial?

A. Process must be issued to arrest C and bring him before the court. (*a*) Under sec. 3 of the Indictable Offences Act 1848, the prosecutor may apply to the clerk of the peace for a certificate of indictment found (which must be furnished on payment of one shilling), and, on this being produced to a justice where the offence was committed, or where C resides, or is, or is suspected to be, a warrant must be issued by him; when arrested, C is brought before a justice, who commits for trial on sworn proof of his identity. (*b*) The quarter sessions may issue its bench warrant to arrest C; but apparently this warrant is only in force during the particular sessions. (*c*) The court before which the indictment is found may issue a *capias* to the sheriff to arrest C for trial; a second and third *capias* may issue; then follows a writ of *exigent*; if C still does not appear, a coroner for the county pronounces judgment of outlawry, which amounts to

a conviction; C may then be arrested by anyone without warrant. This course has not been used in England since 1870. (*Ante*, p. 162.)

Q. Give an account of arraignment and its possible incidents. (Ante, pp. 162, 163.)

Q. What is the proper course of procedure where a prisoner upon arraignment appears not to understand the proceedings? (Ante, pp. 162, 163.)

Q. What is a motion to quash an indictment? (Ante, p. 163.)

Q. Upon the trial of an indictment when and how can objection be taken (1) *to a formal defect on the face of the indictment,* (2) *to a defect in substance?* (Ante, pp. 163, 164.)

Q. What is a demurrer to an indictment? (Ante, p. 164.)

Q. What pleas are open to a person indicted for a criminal offence? (Ante, pp. 164, 165.)

Q. Explain the meaning of the following pleas, and the consequences of each: (1) *Guilty;* (2) *Not guilty*; (3) *Autrefois acquit;* (4) *Autrefois convict.* (Ante, pp. 163, 165.)

Q. A, being acquitted upon an indictment charging him with being an accessory before the fact to a felony (e.g., *murder*), *is afterwards indicted as a principal felon* (e.g., *as the actual murderer*), *would Autrefois acquit be a valid plea to a second indictment? State your reasons.*

A. No (R. v. Plant, 7 C. & P., 575). The true test is, whether the facts alleged in the second indictment, if true, would have sustained the first (R. v. Vandercomb, 2 East P. C., 519); or whether the prisoner on the first trial stood in peril of a conviction for the offence now charged.

Q. State the law as to challenges of jurors. Explain — Challenge to the array; challenge to the polls; a principal challenge; a challenge to the favour. (Ante, pp. 166, 167.)

Q. Specify some of the chief rules of evidence observed on a criminal trial.

A. At a criminal trial (1) more than one witness is

sometimes required (*e.g.*, treason and perjury); (2) evidence of accomplices is viewed with suspicion; (3) confessions must be purely voluntary, and are only admissible against the person making them; (4) a prisoner on his trial could not formerly give evidence, but this is abrogated by the Criminal Evidence Act 1898; (5) husband and wife could not give evidence for or against each other before the 1898 Act; (6) there is a difference as to the use of depositions; (7) dying declarations as to cause of death are admitted in cases of homicide; and (8) witnesses as to character are allowed.

Q. How is the attendance of a witness procured at the trial of an indictment? (Ante, p. 168.)

Q. What persons are incompetent witnesses at a criminal trial? (Ante, p. 168.)

Q. Can (a) *the accused*, (b) *the wife or husband of the accused, be compelled to be a witness for the prosecution on a criminal trial?* (Ante, pp. 168, 169.)

Q. What is the present law as to the accused, or the wife or husband of the accused, being called as a witness for the defence? (Ante, p. 169.)

Q. When may a witness affirm, instead of being sworn, before giving evidence?

A. By the Oaths Act 1888, if the witness objects to take the oath because he has no religious belief, or taking an oath is contrary to his religious belief (R. v. Moore, 66 L. T., 125).

Q. (a) *In what cases and after what preliminary proof can the deposition of a witness taken before the committing magistrate be read in evidence at the trial of an indictment?* (b) *If the prisoner gave evidence before the magistrate, but at the trial elects not to go into the box, can the prosecution read his deposition in evidence against him?*

A. (*a*) Under sec. 17 of the Indictable Offences Act 1848, on proof that the witness is dead, or too ill to travel, or kept out of the way, or insane, and that it purports to be signed

by the justice before whom it was taken, and was taken in the presence of the party against whom it is to be used, and such party had full opportunity to cross-examine. Or if it was taken under secs. 6 and 7 of the Criminal Law Amendment Act 1867 (*ante*, p. 150), on proof that the witness is dead, or that there is no reasonable probability that he will ever be able to travel or to give evidence, and it purports to be signed by the justice taking it, and reasonable notice in writing was given to the other side, who had full opportunity to cross-examine. (*b*) Yes, there is nothing in the Criminal Evidence Act 1898 to forbid it (R. v. Bird, 62 J. P., 760).

Q. When is a notice to produce a document on a criminal trial necessary? and if the notice is not complied with, how do you get the contents of the document in evidence?

A. If the document is in the hands of the other party, notice to produce must be served on such party or his solicitor. If the document is not produced, secondary evidence may then be given of its contents.

Q. What are the rules generally observed at a criminal trial with regard to evidence of the character of the accused? (Ante, p. 170.)

Q. When can a confession made by a prisoner be used as evidence against him? (Ante, p. 170.)

Q. Will evidence be received for the prosecution showing that the accused has previously committed offences similar to that for which he is being tried? (Ante, p. 170.)

Q. To what extent, and for what purpose, are the particulars of a complaint made to other persons, by a woman against whom an indecent crime has been committed, admissible in evidence against the offender?

A. Both the fact, and the full particulars, of the complaint are admissible in evidence for the one purpose of showing that the conduct of the prosecutrix has throughout been consistent with the story she has told in the box (R. v. Lillyman, 65 L. J., M. C., 195).

Q. If two or more prisoners are put upon their trial, is it competent for the Crown to call either of those prisoners as a witness to give evidence for the prosecution? (Ante, p. 171.)

Q. What is the law and practice where an accomplice is examined as a witness in a criminal case as to his being corroborated? (Ante, p. 171.)

Q. On the trial of an indictment charging a person with being a receiver of stolen goods, what evidence may be given for the purpose of proving guilty knowledge? (Ante, p. 97.)

Q. When it is desired to charge a prisoner with having been previously convicted, is the fact of such previous conviction stated in the indictment? How is such previous conviction proved, and at what stage of the trial? (Ante, pp. 159, 160.)

Q. In what cases is a dying declaration evidence; and under what circumstances must it be made in order to be evidence? (Ante, p. 171.)

Q. What tests must a jury apply to circumstantial evidence before they convict upon it? (Ante, p. 172.)

Q. State the various kinds of verdicts. (Ante, p. 172.)

Q. When can a person indicted for one offence be convicted of another? (Ante, p. 173.)

Q. What is a motion in arrest of judgment? (Ante, p. 173.)

Q. Can a defendant, convicted on the trial of an indictable offence, move for a new trial? (Ante, p. 174.)

Q. Is there any appeal in criminal cases? (Ante pp. 174–177.)

Q. When a prisoner has been convicted of wilful murder and sentenced to death, what course should be adopted to endeavour to obtain a commutation of the sentence, or a pardon?

A. Any facts likely to procure his pardon should be laid before the Home Secretary; and if he thinks the case one for the interposition of royal mercy, he recommends it to

the King, who usually acts on the recommendation. The pardon may be absolute, or conditional on his submitting to some punishment or other conditions specified in the pardon.

Q. State the effect of the Forfeiture Act 1870 (33 & 34 Vict., c. 23). (Ante, p. 39.)

Q. (1) *Under what circumstances can a coroner's inquest be held on a body?* (2) *If the coroner's jury return a verdict of murder or manslaughter against some person, can such person be tried on the coroner's inquisition, or must an indictment be preferred before, and a true bill found by, a grand jury?*

A. (1) Where any person is found dead, or is slain, or dies suddenly, or in prison (Coroners Act 1847, sec. 3). (2) The prisoner can be tried on the coroner's inquisition. But as a matter of practice the prisoner is taken before justices of the peace under the Indictable Offences Act 1848; and if they commit for trial, an indictment is preferred against him, and the usual course is to try him both on the inquisition and the indictment at the same time. If the justices decline to commit for trial, the prisoner is not usually tried on the inquisition.

Summary Jurisdiction.

Q. What do you know about the jurisdiction of justices of the peace? (Ante, p. 178.)

Q. What is the summary jurisdiction of justices of the peace? (Ante, p. 179.)

Q. How are justices controlled in the exercise of their summary jurisdiction? (Ante, pp. 179, 180.)

Q. What right has a person brought before justices to be tried by jury, instead of summarily? (Ante, p. 180.)

Q. What is a petty sessional court? (Ante, p. 180.)

Q. What is the difference between an information and a complaint? (Ante, p. 181.)

Q. How is the payment enforced (a) *of a penalty under a conviction, and* (b) *of a civil debt under an order of justices made on complaint?* (Ante, pp. 181, 182.)

Q. State shortly the mode of proceeding on a criminal charge falling within the summary jurisdiction of justices. (Ante, p. 182.)

Q. How many persons can be charged, and how many different offences can be laid, in one information before a magistrate or justice of the peace? (Ante, p. 182.)

Q. How is a summons served? (Ante, p. 182.)

Q. Under what circumstances have justices of the peace power to issue a warrant instead of, or in addition to, a summons for requiring the attendance of accused persons before them? (Ante, p. 183.)

Q. When can a police officer admit to bail? (Ante, pp. 144, 145.)

Q. Have justices power to exempt the accused from punishment although the offence is proved? (Ante, p. 185.)

Q. When a statute authorizes justices to imprison on summary conviction but does not give the option of a fine, can the justices impose a fine instead of imprisonment? (Ante, p. 186.)

Q. What is the rule as to costs if justices impose a fine of not more than 5s.? (Ante, p. 186.)

Q. When must a case before justices be sent for trial and not summarily disposed of? (Ante, p. 186.)

Q. Into what classes are offenders divided by the Summary Jurisdiction Act 1879, for the purposes of the summary jurisdiction over indictable offences given by that Act and the Amending Act of 1899 in cases of consent? (Ante, pp. 186, 187.)

Q. What powers are conferred on justices to deal summarily with (1) *a child,* (2) *a young person,* (3) *an adult, under the*

Summary Jurisdiction Acts 1879 and 1899 for indictable crimes? (Ante, pp. 187, 188.)

Q. What jurisdiction have justices to enforce (a) *a recognizance for appearance before their court, or for doing some other act in a proceeding pending in their court;* (b) *a recognizance to keep the peace, or be of good behaviour, or not to do some act?*

A. (*a*) They can declare the recognizance forfeited, and enforce payment of the sum due thereunder as if it were a fine ascertained by a conviction; but before sale of goods under a distress warrant, they may cancel or mitigate the forfeiture upon security for future performance of the act and payment of costs or other conditions. (*b*) They may, on proof of the principal's conviction for any offence which is in law a breach of the recognizance, by conviction adjudge the recognizance forfeited and order the principal and sureties to pay the sums for which they were bound; but any person seeking to enforce the recognizance may, by notice in writing, require the recognizance to be transmitted to general or quarter sessions (S. J. Act 1879, sec. 9).

Q. What is the law as to appeals from summary convictions? (Ante, pp. 188-190.)

Q. On what grounds can justices be asked to state a special case? Is there any remedy if they decline to do so? (Ante, p. 189.)

Q. Have justices of the peace any summary jurisdiction in cases of cruelty to animals? (Ante, p. 104.)

Q. What is the jurisdiction of justices to deal summarily with cases of malicious injury to property, and how may such jurisdiction be ousted? (Ante, pp. 103, 104.)

Q. (1) *What steps should be taken to obtain an affiliation order?* (2) *What evidence must be given to obtain such order?* (3) *What order have magistrates power to make if the charge be proved?* (4) *How is payment under such an order enforced?* (Ante, pp. 190–192.)

Q. What jurisdiction has a court of summary jurisdiction under the Employers and Workmen Act 1875? (Ante, p. 192.)

Q. What are the provisions of the Summary Jurisdiction (Married Women) Act 1895? (Ante, pp. 192–194.)

Q. Explain the statutory jurisdiction of justices of the peace as regards the fraudulent removal of goods for the purpose of avoiding a distress? (Ante, p. 195.)

Q. Can justices of the peace grant ejectment orders? (Ante, p. 195.)

Q. Advise a justice of the peace as to his power of action, and as to the parties punishable and their punishment, in a case where it is supposed that liquors are kept and sold in a certain house contrary to law.

A. If satisfied by information on oath that there is reasonable ground for suspicion, he may grant a search warrant, empowering a specified constable at any time within one month to enter by force and search, and seize, and remove any liquor found there; and if the owner or occupier is convicted, such liquor and the vessels containing it are forfeited. Any person found on the premises at the time of seizure is presumed to have been there for illegally dealing in intoxicating liquor (and this includes a buyer as well as a seller, McKenzie v. Day, 68 L. T., 345), and can be fined 40s., and must give his name and address, if required, and on failing to do so may be arrested without a warrant, and on giving a false name and address may be fined £5 (Licensing (Consolidation) Act 1910, sec. 82). Dealing at unlawful hours on licensed premises entails a fine of £10 (*Ibid.*, sec. 66). Any person selling without a licence or on unlicensed premises by retail can be fined £50 or 1 month (*Ibid.*, sec. 65). Selling spirits to any person under 16 entails a fine of 20s. (*Ibid.*, sec. 67). Selling or delivering any intoxicant to a person under 14 (except not less than a pint in a corked and sealed vessel for consumption off the premises) entails a fine of 40s. (*Ibid.*, sec. 68).

Q. How is a new licence to sell intoxicating liquors obtained? (Ante, p. 197.)

Q. How is such a licence renewed? (Ante, p. 197.)

Q. How is a licence transferred on a change of tenants? (Ante, p. 198.)

Q. How is payment of poor rates enforced? (Ante, p. 200.)

Q. How should you proceed to have a man bound over to keep the peace? What consequences follow a breach of the recognizance? (Ante, p. 200.)

Q. What is the purport of a search warrant, when will such a warrant be granted, and what is the duty of a justice of the peace when it has been executed? (Ante, p. 200.)

Q. What is the general object of the Truck Acts? (Ante, p. 201.)

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